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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

LESOTHO

[27 April 1998]

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Introduction

1. In order to identify the achievements and constraints in realizing Lesotho's obligations as a party, to the Convention on the Rights of the Child, an Inter-ministerial committee comprising government sectors, non-governmental organizations (NGOs) and the donor community was established. Its mandate included the compilation and consideration of reports on national measures and strategies for the implementation of human rights programmes centred on policy and the existing legislative framework.

2. Many laws are already in place that provide for the protection of children. However, inconsistencies and contradictions between various proclamations and statutes exist. Consequently, there is a need to harmonize such laws and to eliminate the contradictions that undermine those laws that are already in line with the Convention. Where practice is already ahead of the law, legislative amendments will take cognizance of this fact. It is hoped that the newly initiated Law Reform Commission will address such issues.

3. The long-term problem lies in changing attitudes, behavioural norms and customs so that people are sensitized to the need to respect children's rights.

I. GENERAL MEASURES OF IMPLEMENTATION

A. Institutional framework

4. Lesotho signed the Convention of the Rights of the Child in 1990 and ratified it on 9 April 1992. The signing of the Convention coincided with the World Summit for Children, which adopted the World Declaration on the Survival, Protection and Development of Children and a 10-year plan of action for implementing the Declaration in the 1990s. The 10-point programme has been translated into a five-year National Plan of Action (NPA) for children in Lesotho. The 1995-2000 NPA for children articulates how the Declaration will be implemented and realized at the national level. Through the NPA, the Government of Lesotho has committed itself to improving the lives of children and women through measurable progress against malnutrition, preventable diseases and other social ills.

5. The Government of Lesotho/UNICEF National Programme of Action (NPA) and 1997-2002 Country Programme are main mechanisms for realization of the socio-economic rights adopted by the World Summit. The NPA programmes are coordinated by the Ministry of Central Planning through the Sectoral Programming Division and implemented by various ministries and NGOs.

B. Health

6. Lesotho has declared "Health for all by the year 2000" as the cornerstone of its national health policy. Complete physical, mental and social well-being is the ultimate goal. But, despite interventions made, the infant mortality rate (IMR), estimated at 82/1,000, and the child mortality rate (CMR), estimated at 55-60/1,000, remain high. Diarrhoea, acute respiratory infection (ARI) and malnutrition are the main causes of infant-child morbidity and mortality. HIV/AIDS, drugs, alcohol abuse,

sexually transmitted diseases and tuberculosis are diseases that have required sustaining and expanding current immunization levels, promoting integrated health services delivery, maintaining logistics support for immunization programmes for children and increasing ante-natal care. Following is a presentation of the NPA goals and strategies in the health sector:

Health: NPA goals and strategies

Goal: To reduce IMR from 82 to 37 per 1,000 live births and to reduce U5MR from 60 to 30 per 1,000 live births.

Strategies:

promoting supervised child birth;

establishing community and institution-based secreening for high-risk pregnancies;

encourage better schooling and education of parents;

integrating vitamin A capsule distribution into child health programmes.

Goal: To maintain and increase a high level of immunization coverage (at least 90 per cent of children under one year of age by year 2000).

Strategies:

sustaining and increasing current immunization levels;

maintaining logistical support for immunization programme.

Goal: To reduce deaths due to diarrhoea in children under the age of 5 and to reduce the diarrhoea incidence rate from 300 to 100.

Strategies:

improving environmental health, water and sanitation;

expanding case management to community level;

promoting eduction on personal hygiene.

Goal: To reduce deaths due to acute respiratory infections in children under the age of 5.

Strategies:

ensuring effective case management at all levels;

strengthening home-based ARI case management.

Goal: To reduce maternal mortality rate from 282 to 141 per 100,000.

Strategies:

improving access to health facilities throughout the country;

increasing ante-natal care and services;

promoting safe motherhood activities;

researching traditional practices surrounding pregnancy and childbirth.

Goal: To prevent and control the spread of HIV infection, and limit the economic, social and health conequences of HIV/AIDS and sexually transmitted diseases.

Strategies:

strengthening the National AIDS Programme to encourage adoption of preventive measures against HIV/AIDS;

conducting research on different aspects of HIV/AIDS and promoting safe sex practices.

C. Agriculture and nutrition

7. Increased food production and livestock productivity have been emphasized to promote self-sufficiency and to alleviate poverty and improve household income. However, persistent drought in the early 1990s, policy shortfalls, uncomplementary sectoral policies, lack of financial resources and weak commitment of farmers have frustrated efforts. Malnutrition in children is due to lack of food security. A national survey conducted in 1992 among the under-five-year-olds showed a chronic malnutrition rate of 33 per cent. A second survey, carried out in 1993 among the same group showed a decline to 43 per cent. Following are the NPA goals and strategies in the health sector:

Nutrition: NPA goals and strategies

Goal: To reduce malnutrition among under-five-year-old children as follows:

underweight:	18 per cent to 9 per cent
wasting:	5.7 per cent to 2.8 per cent
stunting:	42 per cent to 21 per cent

Strategies:

promoting breastfeeding and appropriate weaning practices;

expanding nutrition surveillance with emphasis on community-based growth monitoring;

promoting education for parents and child minders;

accelerating the expansion of Barnako Initiative to all districts.

Goal: To eliminate iodine and vitamin A deficiences and their consquences.

Strategies:

improving the supply and intake of micro-nutrients;

advocating for legislation on iodized salt;

promoting the distribution and consumption of iodized salt.

D. Education

8. Relevant, high-quality education is seen as the most critical ingredient for sustainable development. Since independence education policy has been such that primary education has developed remarkably. Enrolments since 1986 have grown by 14 per cent (from 217,649 to 247,398). Government education policy is currently focused on improving efficiency, quality and access.

9. Early childhood development (ECD) lays emphasis on core stimulation, good health and proper nutrition for the under-fives. However, ECD in Lesotho lacks clear regulations. There is no set minimum standard for the curriculum, no clearly defined qualifications for ECD teachers and variable quality of child care. Strategies to achieve education for all and good quality early childhood development include promoting community participation; decentralizing primary school management and resources; increasing capacity for access.

10. The Ministry of Education, during the deliberations on this draft report, was encouraged to incorporate the Convention into the school curriculum. This would help children understand the Convention and act as a dissemination strategy. The Inter-ministerial Committee on Human Rights suggested that the Convention should be brought to the attention of the general public, in particular parents. The view was expressed that the Convention needs to be explained to parents so that they understand it and can appropriately balance the rights of the child with those of parents within the context of article 5 of the Convention. It was emphasized that the Convention should be disseminated within the proper cultural context for Lesotho. Non-governmental organizations are already engaged in teaching rural Basotho people about the Convention, translating it and making it accessible to the local community in local language.

11. Following are some key NPA goals in the education sector:

Education: Some key NPA goals and strategies

Goal: To provide universal access to basic education to at least 80 per cent of primary school-age children and increase primary school completion rates from 30 per cent to 65 per cent of school-age children (boys from 29 per cent to 64 per cent and girls from 51 per cent to 85 per cent).

Goal: To increase enrolment of school-age children from 71 per cent to 87 per cent (boys from 64 per cent to 85 per cent and girls from 78 per cent to 100 per cent).

Strategies:

promoting community particpation;

decentralizing primary school management and resources;

integrating children with disabiilties into the mainstream education system; and

reducing the number of over-age and under-age children at primary schools.

Goal: To improve the quality and relevance of and access to technical and vocational training.

Strategies:

expanding and upgrading technical and vocational training institutions;

coordinating and strengthening management of vocational and technical training among government ministries, the private sector and NGOs.

E. Law and justice

12. Lesotho is governed by a dual legal system with both customary and Roman-Dutch law equally recognized. Customary law governs areas of marriage, divorce, inheritance, custody, adoption and maintenance. Roman-Dutch law also covers these areas and this causes considerable problems in determining the law to be applied in cases of adoption of children, custody in cases of divorce, succession and inheritance. It is expected that the Law Reform Commission, established by the Law Reform Act in 1993, will tackle the harmonization and unification of family law. The enforcement of maintenance orders is another problem that needs to be addressed.

13. The Street Law Project set up at Moshoeshoe II High School attempted to promote basic legal literacy among schoolchildren. The Inter-ministerial committee suggested the revival of this project. A need to mobilize resources to support these efforts was expressed.

14. Following are the NPA goals and strategies in this field:

Law and justice: NPA goal and strategies

Goal: to promote equality and justice for all before the law, including the protection of children in especially difficult circumstances, such as juvenile offenders.

Strategies:

introducing juvenile panels composed of police, prosecutors and probation officers to reprimand young offenders;

sensitizing magistrates on the use of non-custodial sanctions such as community service;

using the informal system of justice for young offenders.

15. Even before ratification of the Convention Lesotho had a legislative framework that, in some respects, corresponded to the spirit of the Convention. The Children's Protection Act of 1980 already recognized and defined a child as a person under the age of 18 years. However, an anomaly exists in the qualification of the definition by the word "unmarried", which does not appear in the Convention. The Marriage Act of 1974 also provides a similar age in respect of the marriageable age of boys. However, marriageable age for girls is specified as 16 years in the same Act. This age exposes the girl child to a relationship of marriage that might affect her physical development and health through early child-bearing. The age limit for marriage needs to be raised to 18 years for girls. The Law Reform Commission will, it is hoped, review the age of 16 and change it to 18 years to bring it in line with the Convention. The varying ages specified by the Labour Code Order of 1992 for defining a child for purposes of different types of employment are in accordance with the minimum age set by the International Labour Organization (ILO) and other international labour conventions for various purposes. Lesotho's Labour Code in most respects has been drafted along the same lines as the ILO labour standards.

16. In respect of general principles promoting non-discrimination, the Adoption Proclamation of 1952, section 14, is discriminatory in that it bars Africans from adopting children and confines them to adoption under customary law. This law is not compatible with the Convention which provides for adoption by anyone, as long as the welfare of the child in need of care is provided for. It is hoped that the Law Reform Commission will effect the necessary legislative amendment and accord all persons, irrespective of race, colour or creed, the right to adopt. However, it should be noted that in practice the courts, in their interpretation of section 14 of the Proclamation, have considered the welfare of the child as the paramount guiding factor in adoption as opposed to the race, colour or creed of the adoptive parents.

17. The Interim Constituent National Assembly of 1991 to 1992, with technical assistance from the Commonwealth, drafted a Constitution that ushered in democratic rule in Lesotho, reflecting internationally recognized universal standards and norms of a civil society. The Lesotho Constitution of 1993 in section 32, subsections (a) (b) (c) and (d), has non-justiciable provisions that recognize the adoption of social policies that protect children against all forms of exploitation. In the Convention non-exploitation of children is a right. The Children's Protection Act of 1980 also provides protection to children in need of care as specified by section 10, subsections (a) (b) (c) (d) and (e). The Constitution however remains silent about the rights of refugee children. A committee has been

established in parliament to look into constitutional provisions that are contrary to democratic norms and need amendment. Even where the Constitution is silent on the measures it should provide for, appropriate provision will be made.

18. Civil and political freedoms in the Convention are similarly recognized in our domestic laws. These laws are the Lesotho Constitution of 1993, the Lesotho Citizenship Order of 1971 and the Registration of Births and Deaths Act of 1973. Although the subsidiary laws provide for the civil and political freedom of children in a positive manner, section 8 of the Lesotho Citizenship Order makes a distinction between legitimate and illegitimate children when it comes to registration of the birth of an illegitimate child. The law protects the biological father of the illegitimate child against disclosure. Customarily, legitimate and illegitimate children are treated differently when it comes to property rights in the family and the ascribing of names. Sometimes illegitimate children are given names that demean them. This practice, as recognized by the Inter-ministerial Committee on Human Rights, should be eradicated.

19. Under section 308 of the Criminal Procedure and Evidence Act of 1981 males under the age of 21 years may be given a sentence of whipping. Girls may not be whipped. Corporal punishment persists despite being contrary to the provisions of the Convention. Future compatibility needs to be achieved in this regard, through proper legislative amendment.

F. Dissemination of principles

20. Strategies have been formulated to disseminate information on children's rights and welfare programmes. These include:

(a) Expanding and sustaining radio programmes and newspaper columns that promote child rights issues and highlight the problems hindering the full enjoyment of these rights;

(b) Creating and strengthening social communication networks at village, ward, district and national levels for sustained radio interactive programmes on children.

21. UNICEF is very instrumental in this regard. Advocacy, communication and social mobilization capacities, however, still need to be harnessed and strengthened in collaboration with Government and NGOs.

22. Publicity has been generated for this report through wide circulation of this draft to all line ministries and United Nations organizations involved in programmes for children's rights. In addition, the Christian Council of Lesotho (CCL) and political parties have also been given the draft. All these organisations have made inputs to this report during che workshop held from 28 to 30 August 1996.

23. When elaborating on the translation and dissemination of conventions such as the Convention on the Rights of the Child members of the Inter-ministerial committee suggested that all parties concerned could work with the Ministry of Health and Social Welfare's existing programme of parent education. Several NGOs have also embarked on translation of materials. The Committee, however, suggested better coordination and follow-up of efforts to disseminate and translate human rights materials.

II. DEFINITION OF A CHILD

24. Article One of the Convention defines a child as any human being below the age of 18 years, unless national laws recognize otherwise. In Lesotho, various pieces of legislation, including the Age of Majority Ordinance of 1829, the Children's Protection Act of 1980 and the Labour Code of 1992, define children by different age limits. For purposes of criminal responsibility, protection, marriage and capacity to contract, the law further prescribes different ages regarding the definition of a child.

A. The Children's Protection Act No. 6 of 1980

25. The Children's Protection Act of 1980 in section 2 defines a child as an unmarried person under the age of 18 years. The Act does not provide for persons under the age of 18 who are married. However, it does make provisions for any person who is under 18 and in need of care, abandoned, neglected, abused, in a difficult situation or a juvenile offender.

B. Criminal responsibility

26. Roman-Dutch Law, which is the common law of Lesotho, defines a child for rebuttal criminal responsibility as a person between the ages of 7 and 14 years. If a child between the ages of 7 and 14 knowingly and intentionally commits a crime, understanding the consequences of the wrongful act, he or she can be held criminally responsible once sufficient evidence is adduced (see case of Rex v. Nozabalese 'Moso, annex).

C. The Age of Majority Ordinance No. 62 of 1829

27. The Age of Majority Ordinance stipulates the age of majority as 21 years. Any person who has therefore attained the age of 21 can freely contract and enter into marriage without seeking prior parental consent. Any person under 21 is considered a child and a minor requiring parental consent in order to enter into a valid civil marriage or a valid contract. Where a contract is to the benefit of the minor, such as an apprenticeship, a minor is free to contract without prior parental consent (see case of Mohapi v. Maqelepo, annex).

28. In common law upon marriage at 18 years, subject to parental consent, a male child attains majority, whereas a female child, even upon marriage at a similar age, remains a minor with the perpetual status of a child under the guardianship and marital power of the husband, if married in community of property. This legal position extends to all females married under Lesotho customary law.

D. Marriage of minors: the Marriage Act No. 10 of 1974

29. Section 25, subsection 1, specifies the position of the law in respect to the marriage of minors. The section specifies that no marriage officer shall solemnize a marriage between parties, one or both of whom are minors, unless the consent of the party or parties legally required for the purpose of contracting the marriage has been granted and furnished to him in writing. For purposes of this section a minor does not include a person who is under the age of 21 years and who has previously contracted a valid marriage which has been dissolved by death or divorce.

30. Subsection 2 of the same section provides that consent in respect of marriage of a minor shall be given by the parents or guardian of the minor. Such consent shall be furnished in writing to the marriage officer. In circumstances where the parents of the minor disagree, section 25 (2) (i) provides that the consent of the father shall be sufficient, while section 25 (2) (ii) provides that where a minor is illegitimate, the consent of the mother or other lawful guardian is required. For all intents and purposes a minor in this respect shall be considered as anyone 18 years and below.

31. Section 27 of the Marriage Act specifies persons under certain ages who are prohibited from marrying. It provides that no boy under the age of 18 years shall be capable of contracting a valid marriage, except with the written permission of the Minister. This may be granted in any particular case in which the Minister considers such marriage desirable. Such permission shall not relieve the parties to the proposed marriage from the obligation of complying with all other requirements prescribed by law. Such permission shall also not be necessary if, by reason of any such other requirement, the consent of a judge in the matter is necessary and has been granted.

32 If a boy under the age of 18 years and a girl under the age of 16 years contract a marriage without the written permission of the Minister in terms of the Act or a prior law, the Minister may, if he considers the marriage desirable, and providing such a marriage was in every other respect solemnized in accordance with the provisions of this Act, or as the case may be, any prior law, and there was no other lawful impediment thereto, direct in writing that it shall, for all intents and purposes be a valid marriage.
Section 27 (3) provides that if the Minister directs that a marriage referred to in subsection (2) shall for all purposes be a valid marriage, he shall be deemed to have granted prior written permission to such marriage.

33. Proof of age is necessary if there is suspicion that the parties to a marriage are not of age. Section 28 stipulates that if parties appear before a marriage officer for the purpose of contracting a marriage with each other, and such marriage officer reasonably suspects that either of them is of an age which bars him or her from contracting a valid marriage without consent or permission in writing or satisfactory proof showing that the party in question is entitled to contract a marriage without such consent or permission, such a marriage is not allowed.

E. The Labour Code Order of 1992

34. The 1993 Constitution of Lesotho in Section 32, subsection (b), provides that children and young persons are protected from economic and social exploitation. Subsection (c) states that the employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is punishable by law.

35. For purposes of employment, the Labour Code Order No 118 of 1992 defines a child as anyone under the age of 15 years. This Act is commonly seen as applying only to industrial work. In Lesotho persons under 15 years of age are regularly engaged in labour via cattle herding and domestic work.

F. Medical counselling

36. No specific legislative provision exists regarding the age at which a child may seek free medical counselling without prior parental consent. Therefore, in this regard, the Age of Majority Ordinance No. 62 of 1829 and the general principles of the law of contract could take precedence. The general principles of contract stipulate that a minor has no capacity to contract. For purposes of entering into a contract a minor is one who is below the age of 21 years.

37. While medical counselling in respect of reproductive matters protects children, in particular the girl child, from unwanted pregnancies, sexually transmitted diseases, HIV/AIDS and abortion, some parents strongly feel that sexual reproduction health education empowers children to be sexually active, whereas others feel that it enables them to make informed decisions. During the workshop debate on the draft report, parents felt it was their responsibility to decide when children should seek medical counselling. In this respect, some parents felt that they must be seen to play a pivotal role and the traditional moral code should not be allowed to decay. Parents expressed the view that the responsibilities of parents do not necessarily coincide with the rights of children. For example, the child's right to protection often conflicts with the parent's responsibilities. In this regard, a recommendation was made that a delicate balance between parental responsibilities, the rights of children and those of society needs to be achieved. Parents need to devote time to talk with their children and assume a guiding parental role. Societal valves, moral beliefs, and attitudes that positively mould a child should be included in the child's upbringing. At the same time, children should be seen as individuals, different from their parents.

G. Sexual consent

38. The Women and Girls' Protection Proclamation No. 14 of 1949 prohibits a sexual relationship with girls under the age of 16 years. The Proclamation provides, in section 3 (1), that any person who has unlawful carnal connection with a girl under the age of 16 years or who commits with a girl under that age immoral or indecent acts, or who solicits or entices a girl under that age to the commission of such acts, shall be guilty of an offence, and being

convicted thereof, shall be liable at the discretion of the court to a fine not exceeding 1,000 maloti or to imprisonment for a term not exceeding six years.

H. Conscription into the armed forces

39. The Defence Act of 1996 does not make it binding for persons to join the Defence Force. The Act stipulates 18 to 24 years as the minimum age range for joining the Defence Force. Before 1993 and democracy, the age limit for joining the Defence Force was not specified by legislation and was very arbitrary. Originally one had to be in possession of a standard 6 qualification or Junior Certificate, be six feet tall and heavy.

I. Testimony in court

40. As a general principle of evidence, every person is competent and compellable to give evidence in court, including minors. However, the evidence of a minor must be approached with caution. It must be corroborative and not rebutted by any other form of evidence. The court taking proceedings from a child shall, in accordance with section 6 (1) (2) and (3) of the 1993 Constitution of Lesotho, record in camera. The Criminal Procedure and Evidence Act of 1981 is, however, silent on this issue.

J. Consumption of alcohol

41. In primary and secondary education, individual schools make their own regulations prohibiting the use of drugs and alcohol, including the use of cigarettes. The Ministry of Education has no law or policy on these issues. No legislation exists that prohibits the sale of liquor to persons regarded as children by the law. If the legislation existed, it is likely that enforcement of the law would be difficult. Most laws in Lesotho are enacted, but many go unenforced. Sometimes laws are unenforced due to lack of access to law because there is no translation of the laws into the local language. In the absence of a law regulating the sale of liquor to children under 18 years, parents, social workers and police have to work jointly to prevent children from entering shebeens. Parents also have to stop sending children to buy liquor.

K. Deprivation of liberty and imprisonment

42. Section 6 (1) (f) of the 1993 Constitution provides as follows regarding the liberty of a minor: personal liberty shall not be arrested or detained save as may be authorized by law in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare.
Section 26 (1) of the Children's Protection Act of 1980 stipulates that no child shall be punished by imprisonment.

III. GENERAL PRINCIPLES

A. Non-discrimination

43. All rights laid out in the Convention are to be accorded children without any discrimination based on race, colour, sex, language, religion, political or any other status of the child, or of the child's parents or guardian. In eliminating discrimination based on any of these factors, positive measures have to be undertaken to protect the child against discrimination. In this regard, the Constitution of Lesotho provides that no law shall be made that is discriminatory in substance and effect. However, the Constitution also provides that any existing laws, affecting persons who are not citizens of Lesotho or relating to adoption, marriage, divorce, property and death rights, shall not be regarded as discriminatory under the law.

B. Adoption

44. Discrimination exists in the Adoption Proclamation No. 62 of 1952 which does not permit Africans to adopt children. Section 14 of the Adoption Proclamation provides that, "this proclamation shall not apply to Africans and nothing in this Proclamation contained shall be construed as preventing or affecting the adoption of an African child by an African or Africans in accordance with Basotho law and custom". Legislative intervention has become imperative so that the welfare of children in need of care is not marginalized by law, where an able African couple can offer protection beyond the extended family (W.C.M. Maqutu, Contemporary Family Law of Lesotho).

45. Another view in respect to the Adoption Proclamation No. 62 of 1952 is that this piece of legislation is not discriminatory against Africans but protective. The Proclamation attempts to protect African children being adopted by Westerners and subsequently being abused when taken far from home. It also imposes strong legislative measures when processing adoption applications. The policy rationale behind this law is connected with the fact that, at the time the law was enacted, Lesotho was under colonial rule.

46. When African families without children became more educated and enlightened, they lodged adoption applications under the Proclamation, but were met by the limitation of non-application of the Proclamation to Africans.

47. In pursuance of the principles of State policy enshrined in chapter 3 of the Constitution, nothing prevents the Government from promoting a society based on equality and justice by repealing and reviewing any discriminatory laws. Laws such as the Adoption Proclamation of 1952 that discriminate against couples who can adopt outside the extended family and thus improve children's welfare, shall, under the principles of State policy, be reviewed by the Law Reform Commission.

48. The Constitution also provides that Lesotho shall adopt policies designed to provide protection and assistance to all children and young persons without any discrimination for reasons of parentage or other existing conditions.

C. Custom

49. Under written customary law, the first male child is the heir and he has the absolute right to inherit to the exclusion of all the other children. However, common practice has moved ahead and it recognizes that property can devolve to all children, including girl children. Modern customary law, which has evolved and deviated from the written customary law, holds that in cases where a first male child is a drunkard, spendthrift or irresponsible, the right to inherit property devolves to the child or children who contributed to the development of the property. Such a child or children can be either male or female.

50. When a child is born, a child must have a sense of belonging. When a child is born in wedlock it belongs to the father's family and succession rights are clear. In Lesotho customary law, however, an illegitimate child has no rights of succession to property of the father or the mother and her family. However, in certain circumstances the family might accord an illegitimate child such rights. Individual families are beginning to vary custom to suit their desires. In common law the child has rights of succession to the property of the mother.

D. Inheritance

51. Research on inheritance by the Women and Law in Southern Africa (WLSA) Research Project clearly shows that written customary law is not being amended often enough and as such does not reflect practice or progress made in eliminating discrimination. The field research that WLSA undertook on the right to inherit revealed very interesting results. While researchers went to the field with the assumption that the girl child was excluded from inheriting property and thus discriminated against, they found that all children can inherit whether they rank as first, second or third in order of birth and whether they are girls or boys. Respondents further indicated that while a customary heir according to written customary law may perform burial rights, property devolution is, in practice, determined on the principle of appropriateness. This principle involves the element of contribution, hence the concept of lefa lea sebeletsoa (inheritance is worked for) (Puleng Letuka and others, 1994, Inheritance in Lesotho). In consequence of this principle it is possible that property can devolve to more than one person or child and these need not necessarily be male. It depends on how much one has contributed and how appropriate the person is in the view of the parents, to look after those who remain. The WLSA research further revealed that children who are born out of wedlock are given property like all other children, as they have also contributed.

E. Best interests of the child

52. The Convention provides that all actions concerning the child shall take full cognizance of the best interests of the child. The State, through legislative provisions, welfare institutions and other administrative measures, has the obligation to provide the child with adequate care, where parents, guardians or those charged with the responsibility fail. The Constitution provides for the best interests of the child by requiring that protection from economic and social exploitation should be given to all

children and young persons. Where such exploitation takes place, the Constitution requires that such acts be punishable by law. In its specific provisions it stipulates that Lesotho shall adopt policies designed to provide that:

(a) Protection and assistance are given to all children and young persons without any discrimination for reasons of parentage or other conditions;

(b) Children and young persons are protected from economic and social exploitation;

(c) The employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is punishable by law; and

(d) There are limits below which the paid employment of children and young persons is prohibited and punishable by law.

F. Child labour

53. Part IX, sections 124, 125, 126, 127, of the Labour Code stipulate restrictions to the employment of children under varied specific conditions, while section 129 makes it an offence to employ children under designated conditions. Section 124 (I) of the Labour Code specifies the minimum age for the employment of children. The section provides that: "no child shall be employed or work in any commercial or industrial undertaking, other than a private undertaking in which only members of the child's own family are employed". The undertaking in accordance with the section is to involve a total of five members of the family. Section 124, subsection (2), lays exceptional situations of light work done by children that shall not constitute employment. The subsection specifically provides that light work done by children between the ages of 13 and 15 in technical schools or similar institutions where the Department of Education has approved such work shall not be regarded as child employment in a commercial or industrial undertaking. Section 124, subsection (4), provides that any person who employs a child contrary to the provisions of this section shall be guilty of an offence and be liable on conviction to a fine of 300 maloti or to imprisonment for three months or both.

54. Section 125 provides further restrictions on the employment of children, including young persons. Section 125, subsection (1), provides that, "no person shall employ a child or young person on any work which is injurious to health or morals, dangerous or otherwise unsuitable, or on any work which the Ministry, by notification in the gazette, or the Labour Commissioner, acting in accordance with any directions of the Minister, has declared, by notice in writing, to be a kind that is injurious to the health or morals of a child or young person". Subsection (2) of the same section specifies that, "no person shall, after receiving notice either orally or in writing from a parent or guardian that he or she is employing a child or any person against the wishes of the parent or guardian, continue such employment. If it becomes absolutely

necessary to discontinue the employment of a child or young person, such discontinuance shall not prejudice the right of the child to be paid such wages up to the time of such discontinuance".

55. Further restrictions and imposition of stringent measures regarding the employment of children and young persons are contained in section 125, subsections (4) and (5), respectively. Subsection (4) provides that no person under the age of 16 years shall be required or permitted to work for more than four consecutive hours without a break of at least one hour, or work for more than eight hours in any one day. Subsection (5) states that no person under the age of 16 years shall be employed under conditions preventing him or her from returning each night to the place of residence of his or her parent or guardian. However, the provision in practice does not apply to domestic servants.

56. Employment of children and young persons on night work is prohibited by section 126 of the Labour Code. Section 126, subsection (1), provides that no child or young person shall be employed at night in any commercial or industrial undertaking. However, this prohibition shall not apply in respect of young male persons who have attained the age of 16 and who perform work in the night in the case of an emergency that could not have been controlled or foreseen. The section provides that in addition, the Labour Commissioner may, for the purposes of apprenticeship or training in such industries or occupations which need to be carried on continuously, authorize the employment during the night of male young persons who have attained the age of 16 years, provided that they are granted a rest period of at least 13 consecutive hours between two periods of work.

57. Restriction on the employment of children and young people in mines and quarries is provided for in section 127. Section 127 (1) provides that no child or young person shall be employed in any mine or quarry or opencast work, except a young male person over the age of 16 years who is employed otherwise than underground, in terms of an apprenticeship agreement approved by the Labour Commissioner, and in respect of whom a medical officer has certified that he is fit for such work.

58. Any person who contravenes the above provisions of sections 125, 126 and 127 shall be guilty of an offence and liable, on conviction, to a fine of 600 maloti or to imprisonment for six months or both. Section 129 of the Labour Code also provides that parents who contravene its provisions have committed an offence and are liable to a fine of 300 maloti or imprisonment for three months or both.

G. Children in need of special protection

59. The Children's Protection Act of 1980 provides for the best interests of the child, in that where children are neglected or in need of care, such children can be placed in designated places for protection. The Act attempts to provide for the best interests of the child by seeking to protect children against neglect and circumstances that impair the welfare of the child and result in juvenile delinquency and the problem of street children. A police

officer, probation officer, parent, guardian or any other person having custody of a child may bring a child to a Children's Court to determine whether the child is in need of care.

60. The Children's Court is empowered by section 10 and subsections (a), (b), (c), (d) and (e) to recommend what is in the best interest of the child in need of care. Measures that may be undertaken include:

(a) An order that the child be returned to or remain in the custody of his parent or guardian or of the person in whose custody he was, immediately before the commencement of the proceedings;

(b) An order that the child be placed in the custody of a foster parent for a period not exceeding two years;

(c) An order that the child be sent to an approved school for a period not exceeding two years;

(d) An order that the child be placed under the care of an approved society;

(e) A recommendation that the child be placed in adoption.

61. Institutionally, a child can be sent to Lesotho Save The Children Fund (SCF) or Save Our Souls (SOS) school village, which provide for children in need of care. The Juvenile Training Centre (JTC) is an approved school established pursuant to section 27, subsections (1) and (2), of the Children's Protection Act. In practice it operates as a detention centre, with some rehabilitative functions. These institutions are not sufficient in capacity to accommodate the number of children in need of care in Lesotho. Consequently, there is a growing problem of street children.

62. Foster care and adoption may also be protective measures recommended in the best interests of the child. In circumstances where proof and evidence are adduced that the child suffered assault, ill-treatment, neglect, abandonment or exposure that caused the child unnecessary suffering and injury, this shall be contrary to the best interests of the child. In such situations, a parent or guardian who subjects a child to such ill-treatment is guilty of an offence and liable to a fine of 500 maloti or five months' imprisonment (sect. 18 (1), Children's Protection Act).

63. Section 18 (2) of the Children's Protection Act suggests that the best interests of the child are denied if a parent or guardian has abandoned and neglected a child by failing to provide adequate food, clothing, lodging, medical care and supervision; has unreasonably left the child in the care of some other person who has shown no interest in the well-being of the child; has failed to provide adequate supervision of the child; and, in the case of an infant, unreasonably left the infant in circumstances that are likely to cause the infant physical or mental distress or harm.

H. Survival and development

64. Article 6 of the Convention recognizes that every child has an inherent right to life, and the State has an obligation to ensure the child's survival and development. The Constitution of Lesotho, in section 5 (1), provides that every human being has an inherent right to life and no one shall be arbitrarily deprived of his life except in accordance with due process of law. The right to survival of the unborn child has not been specifically provided for in the Constitution. The translation of the right has been perceived from a moral point of view by the Churches.

I. The unborn child

65. The Roman Catholic Church, basing itself on the papal doctrine, advocates an unqualified right to survival of an unborn child. Legally, common law makes it an offence to procure an abortion and no specific statutory provision on abortion exists in Lesotho.

66. Proclamation 3 of 1943 on Concealment of Childbirth provides in section 2 (1) that, "any person who disposes of the body of any child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a sentence not exceeding three years". Subsection (2) thereof further provides that, "whenever a person disposes of the body of any such child which was recently born, otherwise than under a lawful burial order, such person shall be deemed to have disposed of such body with intent to conceal the fact of the child's birth, unless it is proved that he had no such intention".

67. Under customary law, preventing the survival of an unborn child through administering certain herbal medication and concoctions is never treated as an abortion but rather termed a "normal miscarriage". Medically, the survival of an unborn child as a general rule is not to be tampered with. However, a few exceptions are recognized, whereby the life of a foetus may be terminated. These exceptions include cases where the life of the mother is at risk or where the child is likely to be born with certain deformities.

68. During the deliberation of the draft report on the Convention, the Inter-ministerial Committee on Human Rights and members of the public recommended that Lesotho's Proclamation 3 of 1943 should be revised to provide for the termination of pregnancies arising out of rape, incest, failure of a contraceptive method and where clear medical evidence exists that a child to be born is likely to be infected with the HIV/AIDS virus. In such cases it was further suggested that the evidence of a social worker or medical practitioner should suffice as proof of the need to terminate pregnancy. A further recommendation was made to the effect that single young girls who fall pregnant accidentally should be given the right to have a legal abortion.

69. While the law is absolutely silent on these issues, it is strongly felt that the law must address them. Chapter 3 of the Constitution sets out principles of State policy, which although not enforceable by any court of law, act as a guide for development of legislation, policy and programmes, given the economic capacity of Lesotho. Amongst such principles of State policy are those geared towards the welfare and development of the child.

70. Lesotho has undertaken to adopt policies aimed at ensuring the highest attainable standard of physical and mental health for its citizens, including children, and to adopt policies designed to reduce the stillbirth rate, infant mortality, and provide for the survival, health and development of the child (sect. 27 (1) (a), Constitution of Lesotho).

71. Presently, illegal abortions take place in back streets and private clinics. Back street abortions have proved to be unsafe and often endanger the lives of young women. Although the problem of illegal abortions exists, its magnitude is not easy to measure. A further recommendation made during deliberations of the draft report was that children must be equipped with reproductive health education so that they can learn about modern reproductive medical facilities and thus make informed choices and decisions. Parents are also urged to play their role and bring up children within an acceptable moral setting in society.

J. Respect for the views of the child

72. It is customarily said that "children are only to be seen and not heard". On the basis of this saying, many parents decide a lot of social matters for their children ranging from education to marriage. However, despite this customary attitude, the Southern African Development Community (SADC) recently held a Children's Broadcasting Forum in the Republic of South Africa, at which they extensively debated the issue of respect for the views of the child. SADC broadcasting organizations met from 30 June to 2 July 1996 and emphasized the need to include children's programmes on radio and television. The broadcasting organizations, Lesotho's included, agreed that not much attention is paid to making children's programmes that are educational, entertaining, and contain an element of traditional values. At this forum, each country was asked to review children's programmes and by 31 December 1996 to submit a report on initiatives taken. Lesotho Broadcasting formed a commission that comprises government ministries that deal with children's issues and relevant NGOs. UNICEF is a patron of the National Broadcasting Commission. The Commission was launched on 16 August 1996 and, among other things, the Commission will:

Advise the Ministry of Information and Broadcasting on areas where children's issues are addressed so that they can be translated into programmes;

Scrutinize existing children's programmes on radio, monitor them and help in the evaluation of such programmes;

Organize for children to be trained to participate in children's television programming.

73. The whole concept of a children's forum aims at helping children to participate in programmes targeted at children. The National Commission is studying the SADC Children's Broadcasting Charter with the aim of implementing the suggestions of the Charter for improving children's right to express their views. This initiative has legal and financial implications in order to make it a reality.

74. The SADC Children's Broadcasting Charter in the preamble provides that the people of the Southern African Development Community affirm and accept the internationally adopted Children's Television Charter which was approved in Munich on 29 May 1995. Without detracting from the International Children's Charter, SADC adopts, in line with the said Charter and in the light of the said Charter, a SADC Children's Broadcasting Charter, which takes into consideration the needs and wants of children in the southern African region. In its subsequent eight operative paragraphs the Charter provides that:

1. Children should have programmes of high quality, made specifically for them, by them and which do not exploit them. The programmes, in addition to entertaining, should allow children to develop physically, mentally and socially to their fullest potential.

2. Whilst endorsing the child's right to freedom of expression, thought, conscience and religion and protection against economic exploitation of children, children must be ensured access to programmes and production of programmes through multi-media access centres.

3. Children should hear, see and express themselves, their culture, their language and their life experiences, through the electronic media which affirm their sense of self, community and place.

4. As part of the child's right to education and development, children's programmes should promote an awareness and appreciation of other cultures in parallel with the child's own cultural background. To facilitate this there should be ongoing research into the child audience, including the child's needs and wants which, as a matter of priority, should be implemented.

5. Children's programmes should be wide-ranging in general content, but should not include scenes of violence and sex.

6. Children's programmes should be aired in regular slots at times when children are available to listen and view and/or distributed via other widely accessible media or technologies.

7. Sufficient research, technical, financial and other measures must be made available to make these programmes of the highest possible standards. In order to achieve quality, codes and standards for children's broadcasting must be formulated and developed through a diverse range of groupings.

8. In compliance with the United Nations policy of cooperation between States in the international community and especially in the SADC countries, the Children's Broadcasting Charter recognizes all international covenants, conventions, treaties, charters and agreements adopted by all international organizations, including the United Nations and the Organisation of African Unity, affecting children, but with particular reference to the United Nations Convention on the Rights of the Child.

75. The Broadcasting Charter exists to offer children an opportunity to see and express their views, culture, language and life experiences through the media. Children, through the provisions of the Charter, are going to be part of the programming process. During the deliberations on the draft report, some members of the Inter-ministerial Committee on Human Rights expressed that due weight should be given to the views of the child in as far as those views are progressive. If not, the parents should have the right to oppose such views, with an explanation of why such views are being opposed. Any view that the child expresses should be balanced by the parents' appropriate advice. Fair representations should also be made by the child and thereafter considered by the parents, taking into consideration the child's age, maturity and best interests, before any decision is made.

76. During its deliberations, the Inter-ministerial Committee on Human Rights expressed concern that the very discussion on respect for the views of the child was not at all representative and inclusive of children. Children did not participate in the workshop to actually express their views about the implementation of the articles of the Convention.

IV. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality

77. The Convention provides in article 7 that a child shall, from birth, have the right to a name and the right to acquire a nationality. Under article 8 States parties to the Convention are obliged to preserve the identity of the child. The 1993 Constitution of Lesotho is silent on the registration of children and has no specific provision in this respect. However, the Registration of Births and Deaths Act of 1973 requires the registration of the birth of a child, whether born alive or stillborn. The Act also requires assignment of a name to the child. The legal requirement for the registration and assignment of a name extends to illegitimate children without any discrimination. The Act further provides for notice of birth of an illegitimate child, which shall, however, not bind the father to give notice of the birth of such a child.

78. The law does not specifically require the father of the child to register the child. In practice, any person can register a child, such as a relative or village chief, in a situation where parents are not present or have died.

79. Customarily, when a child is born in wedlock, the grandparents of the child give the child a name, often that of an elder member of the family. Naming a child after one of the family elders is intended to continue the family lineage. However, in situations where a child is born out of wedlock, the parents of the mother of the child name the child.

80. Article 8 of the Convention provides that the State must protect basic aspects of the child's identity. Culturally in Lesotho a child is given identity by name. Basotho society is patrilineal and a child born in wedlock assumes the father's family name. In like manner, the child assumes the father's totem, which gives a child a sense of belonging and identity. In cases where a child is born out of wedlock, the child assumes the mother's

family name. The child also assumes the mother's totem. In practice such children sometimes suffer grave discrimination in terms of derogatory names given to them by parents, that express a sense of disapproval and non-acceptance. This discrimination in some cases extends to denial of succession and property rights because of illegitimacy. In Lesotho no laws as yet exist to protect the rights of illegitimate children and children born to single parents.

81. The birth registration form contains a column for the name of the father of the child. Single mothers have sometimes experienced problems when registering a child. The Deeds Registry Office has advised the unmarried mother to register the name of her own father as that of the child. This inscription is then written in other legal documents. Such cases have posed problems where, in the future, there has been a desire to reflect the true biological father. Action of this kind has been prompted by the cultural belief that an unmarried woman's child belongs to her father. In some cases the column for father is left blank, giving the impression that there is no legal father. This is often the case where the biological father secretly acknowledges paternity but does not intend to be recognized legally.

82. In some cases, where a male child is born out of wedlock in a family where there is no male child, such a child will continue the family name and lineage in a patriarchal system like in Lesotho. The decision not to inscribe the father's name on the birth registration form may be intentional and aimed at denying the biological father any future legal rights to the male child. But recognition and other social interaction may still be accorded the child.

83. The Inter-ministerial Committee on Human Rights was concerned that every child must have the right to identity through inscription of the father's name in the appropriate column of the birth registration form. However, there were reservations. It was felt that it could be short-sighted to insist that the mother disclose the identity of the father of the child, as the mother may not want the man claiming rights over the child or even interfering with her privacy. The Inter-ministerial Committee on Human Rights therefore suggested that the Deeds Registry must take a positive initiative to design birth registration forms that will not psychologically affect children through a discriminatory design. The Committee pointed out that for the child to know the father, the father's name need not appear on the birth certificate. The element of compulsion should not be applied through the law. The matter should be left to the moral judgement of the persons involved.

84. The administrative and practical process of registration of a child at birth, in accordance with the law, takes place at two key places. The law provides that upon birth a child must be registered at the District Secretary's Office. If a parent fails to do so, a parent must register the child at the Registrar General's Office within two years of the birth of the child. Failure to do so results in the imposition of a penalty.

85. The registration of children should be done directly with the District Secretary's Office immediately upon the birth of a child. In hospitals, births are recorded only for purposes of keeping hospital statistical data. However, undertaking registration at the District Secretary's Office has been noted to have nationwide problems. When training on child registration

started the Bureau of Statistics was given the task of educating the chiefs on the importance of registration. When actual implementation was embarked upon, the printing of registration materials was shifted to the Ministry of Home Affairs. This Ministry was to take up the responsibility of supplying registration facilities. However, since this initiative was embarked upon parents have not managed to register their children immediately upon birth. Many wait for two years and register their children with the Registrar General's Office. While the right to register children exists in the law, the main problem is how to realize this right.

86. Birth registration in Lesotho is presently done by parents who are personally aware that the law requires it and that it is in the best interests of the child to do so. In this regard, the Inter-ministerial Committee on Human Rights suggests that the Ministry of Health and the Ministry of Education should devise a sensitization programme on the legal requirement to register a child upon birth. Further, the possession of a birth certificate should be a precondition for the acceptance of a child into school and first medical consultation with the doctor. Non-registration of births creates further social problems in that when the death of a person is reported, sometimes one is faced with the problem of proving that the person ever lived.

87. Where a child is born in a foreign country, for example in a case where the parents are diplomats, and the child was duly registered in that country, the law does not require a second registration on return to Lesotho. The practical interpretation of the section of the Constitution on citizenship has been that if one of the parents of the child is a Mosotho, such a child has all the rights of a Mosotho.

B. Preservation of identity

88. The 1993 Constitution of Lesotho has explicitly pronounced itself regarding the nationality and preservation of the identity of the child. According to the Constitution, every child born in Lesotho subsequent to the coming into operation of the Constitution shall become a citizen of Lesotho, unless neither of the child's parents was a citizen of Lesotho at birth (sect. 38 (1)). Section 5 (2) of the Lesotho Citizenship Order of 1971 also endorses the position that a child shall not be considered a citizen of Lesotho if, at the time of birth, neither of the parents were citizens of Lesotho. The section stipulates that, "a person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth neither of his parents is a citizen of Lesotho and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho or his father is an enemy alien and the birth occurs in a place then under occupation by the enemy".

89. Section 39 of the Constitution further vests persons, inclusive of children born outside Lesotho, with the right to be citizens of Lesotho, either because of the parents' citizenship of Lesotho by descent, naturalization or otherwise. In situations where the father is a non-national of Lesotho and the mother a national of Lesotho, a child shall have the right to hold dual citizenship and shall, upon reaching the age of 21, by affirmation of oath of allegiance and voluntary act, elect to be a citizen of Lesotho or some other country.

90. Misinterpretation of the law by relevant authorities has resulted in some children with dual citizenship being denied certain rights. Such problems have ranged from non-issuance of local and international passports to refusal to issue scholarships on the grounds that the child is not a Lesotho citizen. This misinterpretation has, however, been remedied through clarification that children falling within section 41 (1) (2) (a) (b) of the Constitution and section 8 (1) and (2) of the Lesotho Citizenship Order of 1971 are citizens of Lesotho and have a right to a Lesotho travel document and the right to earn a scholarship.

91. When a single parent applies for a travel document for the child, the requirements are more stringent than for a married woman who applies for the same. In the former case the documentary evidence of the chief of the area from which the woman originates is required by the immigration officials. In the latter case it is the consent of the husband, as a married woman is considered a minor. In the case of a single parent, the evidence of a rather remote and inappropriate person is required regarding the birth and acculturation of the child, while with a married woman it is sought from an appropriate source.

C. Freedom of expression

92. Article 13 of the Convention accords a child the right to express his or her views and obtain information and impart ideas without any frontiers. Section 14 (1) of the Constitution entitles everyone to freedom of expression, including freedom to hold opinions, ideas and information, without interference and to freedom to communicate ideas, also without any interference. This extends to non-interference with one's correspondence. Where the law makes provision for interference in the interests of defence, public safety, public order, morality and health, such interference shall not be regarded as a hindrance in the enjoyment of one's freedom.

93. The Day of the African Child is normally celebrated in Lesotho in the constituencies, to commemorate the rights accorded children by the African Charter on the Rights and Welfare of the African Child. This takes place despite the fact that Lesotho is not a signatory to the Charter, nor has Lesotho ratified this Charter.

94. In addition to the celebration of the Day of the African Child where children articulate their freedom of expression through music, games and poetry, children have also staged a mock parliament, in front of real parliamentarians, during which they expressed messages of hope concerning the welfare of children in Lesotho. The Ministry of Information and Broadcasting has also recently participated in a SADC Summit, aimed at encouraging SADC member States to adopt policies and programmes that promote and enhance a child's right to freedom of expression. During the celebration of the Day of the African Child cultural events involving children are held. Children dress up in traditional outfits, sing traditional songs and perform traditional dances. The culmination of the celebration of the Day is a traditional meal prepared for children.

D. Access to appropriate information

95. Article 17 of the Convention provides that children shall have access to information and material from various sources that provide children with a cultural and social benefit. The right of the child to receive and observe pornographic material, as noted by the Inter-ministerial Committee, needs to be regulated with the aim of protecting general public morality and the development of the child. The broadcasting organizations of SADC that met from 30 June to 2 July 1996, as already mentioned, emphasized the need to include this concern in children's programmes on both radio and television.

96. Since the Broadcasting Commission was formed, attempts have been made to involve children much more in children's programmes on radio and television. Children's issues are also being highlighted more and more on Radio Lesotho and Lesotho Television. More instructional materials are being aired for schools on radio. Children's drama and Sunday School often appear on television. The Broadcasting Commission has also taken cognizance of the fact that children need to be trained to play a bigger part in children's programmes. It was suggested that the interests of children with special needs and juvenile offenders must be represented in the composition of the National Broadcasting Commission. Children should themselves become members of the Broadcasting Commission.

E. Freedom of thought, conscience and religion

97. Article 14 of the Convention accords children the freedom of thought, conscience and religion. The Constitution in section 13 also provides that everyone shall be entitled to an unhindered enjoyment of freedom of conscience, including thought and religion. This freedom extends to the freedom to change one's religion and manifest, propagate, worship, teach, practise and observe one's religion. Section 13, subsection (2), further entitles religious communities in Lesotho to maintain places of education, manage places of education and provide religious instruction. A minor, however, shall not, without parental consent, attend any place of education and be required to receive religious instruction or take part in any religious ceremony, or observe such religion.

98. Lesotho is characterized by three main religious denominations: Anglican, Lesotho Evangelical and Roman Catholic. Recently Jehovah Witness churches and Assemblies of God have been established. The Baha'i Faith and the Islamic faith also exist. There is also a small proportion of the population that practises animism and ancestor worship. The majority of Basotho, including children subject to parental guidance, actively participate in religious activities such as church-going and Sunday School. In church schools children take religious knowledge as a subject of instruction, irrespective of their different religious denominations. This is provided for in the school curriculum and it does not in any way restrict freedom to enjoy and practise one's religion. Religious knowledge is an examinable subject in schools where it is taught to children.

F. Freedom of association

99. The Constitution of Lesotho provides that every person shall be entitled to freedom to associate freely with other persons for ideological, religious, political, economic, labour, social, cultural and similar purposes without any hindrance. Restrictions on the enjoyment of freedom of association can only be under authority of law, in the interest of defence, public safety, public order, public morality, public health and purposes of protecting the rights and freedoms of other people. The relevant section specifically provides that, "nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any law to the extent that the law in question makes provision (a) in the interest of defence, public safety, public order, public morality or public health; (b) for the purpose of protection of the rights and freedoms of other persons; and (c) for the purpose of imposing restrictions upon public officers".

100. The Children's Protection Act of 1980 requires that children should be provided with a licence in order to attend entertainment. Organized school and church entertainment is not subject to this legislative control. The need to apply for licences was perceived by some members of the Inter-ministerial Committee on Human Rights as an infringement of the child's right to freedom of association as spelled out in the Constitution. For purposes of parental guidance, the Inter-ministerial Committee on Human Rights recommended that since the Children's Protection Act does not specify the types of entertainment that children are not eligible to attend, the law should be made clearer in this regard.

101. While in detention, juvenile offenders are accorded the freedom to correspond with the outside world, their families and their friends.

G. Protection of privacy

102. The right to respect for private and family life is guaranteed under the Constitution. The Constitution provides that every person shall be entitled to respect for his private and family life and his home. Where interference with private life is in the interests of defence, public safety, public order, public morality or public health, such interference shall be permitted by law. Interference shall also be permitted for the purpose of protecting the rights and freedoms of other persons.

103. Interference with the enjoyment of the child's right to privacy occurs when the child is in conflict with the law or is suspected of having committed a crime. Juvenile offenders are searched to ensure that they do not possess any unauthorized articles. Where there is suspicion that a juvenile offender has hidden unauthorized items in the anus, the suspect is often required to strip naked. The search, which is done as a matter of routine upon reception at the Juvenile Training Centre, is also intended to protect prison officers from the risk of being attacked by juvenile offenders in possession of dangerous items. The Inter-ministerial Committee on Human Rights recommended that reasonable grounds should exist for a body search to be carried out and humane measures should be exercised when conducting such a search.

104. In a normal social setting it is often the girl child who has her correspondence and privacy interfered with. This attitude is prompted by the fact that the girl child is more vulnerable to abuse and problems of unwanted pregnancy. The Inter-ministerial Committee, however, expressed that in all fairness the girl child and boy child should both have their correspondence and privacy interfered with where there is the absolute necessity to do so.

H. Prohibition of torture, inhuman treatment and the death penalty

105. Article 37 (b) (c) and (d) of the Convention respectively provides that no child shall be subjected to unlawful arrest, deprivation of liberty, torture, cruel and inhuman treatment and punishment. Deprivation of liberty is a measure that shall only be used as a last resort and shall be for the shortest period appropriate. Every child deprived of liberty shall be treated with humanity and respect for human dignity. Any such child deprived of liberty shall be separated from adults while confined, unless it is in the best interest of the child not to do so. This extends to a child's right to maintain contact with family members through correspondence and visits, except in special circumstances or cases. Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance. The Constitution of Lesotho of 1993 entitles every person to personal liberty, meaning that no one shall be arrested or detained save as may be authorized by law.

106. Section 8 (1) of the Constitution in respect of inhuman treatment and degrading punishment, provides that, "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment". Subsection (2) further provides that "nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution". The latter provision is, however, contrary to human rights as it provides derogation from a non-derogable right and gives scope for the exercise of corporal punishment.

107. In Lesotho juvenile offenders who, according to the Children's Protection Act, are persons under the age of 18 and in conflict with the law, serve a detention period not exceeding three years. Section 9 (2) of the Prisons Proclamation of 1957 provides that, "A person sentenced to detention in a juvenile training centre shall be detained for such period, not extending beyond three years after the date of his sentence."

108. Deprivation of the child's liberty in the Lesotho criminal justice system continues unchecked. A few children are being confined at the request of their parents, due to disobedience in the family. Some magistrates agree to send children to the Juvenile Training Centre for a period the presiding officer or magistrate deems fit. These children are referred to as children in need of care. While technically they are not to be labelled criminal offenders they are treated the same as those awaiting trial and those sentenced to detention by the courts of law. The Prison Proclamation of 1959 in section 9 (2) stipulates that a child can only be detained for a period not exceeding three years. In practice juvenile offenders are treated like prisoners, in that they are not offered rehabilitation programmes. The

Juvenile Training Centre in which they are detained does not operate as a training and rehabilitation centre, but mainly as a prison or detention centre.

109. Children in custody as juvenile offenders cannot be subjected to solitary confinement. Corporal punishment under the Lesotho juvenile justice system is still imposed on male juvenile offenders pursuant to section 307, subsection (1), of the Criminal Procedure and Evidence Act. This constitutes torture, inhuman and degrading treatment. Section 308 of the Criminal Procedure and Evidence Act of 1981 provides for sentences of whipping to be passed on male persons under 21 years. The section provides that, "The Court before which a male person under the age of 21 years is convicted of an offence may, in lieu of any other punishment, sentence that person to receive in private a moderate correction of whipping not exceeding 15 strokes with a light cane to be administered by such person and in such place as the sentence may be present thereat."

110. Section 309 of the same Act prohibits the punishment of females by whipping. Section 308 of the Criminal Procedure and Evidence Act of 1981 provides for the administration of the punishment of whipping on a discriminatory basis. Regarding corporal punishment, the practice of inflicting corporal punishment does not conform to article 37 of the Convention, as it inflicts long-term or permanent physical, emotional and psychological harm on the child. This punishment also degrades the child and makes the child lose self-esteem and dignity as a human person.

111. In Lesotho the administration of corporal punishment was traditionally done using a willow stick which did not leave any permanent marks on the body of the person being whipped. Since the importation of a western instrument like a cane, whipping assumed a different meaning. It was pointed out by one member of the Inter-ministerial Committee on Human Rights that corporal punishment has actually been overruled by courts in countries such as Zimbabwe, Namibia and the Republic of South Africa. Furthermore, the Committee agreed that since corporal punishment is prohibited within the framework of international human rights instruments Lesotho should adhere to those standards and repeal the section in the Criminal Procedure and Evidence Act accordingly.

112. The Juvenile Training Centre in Maseru is the only detention facility that specifically caters for children and it is for males only. In district prisons there are no separate cells for juvenile offenders. The female prison also does not have separate facilities for juveniles. Intermingling of juvenile offenders with the adult female inmates is therefore inevitable. As a result, the chances of combating the criminalization of young offenders are very minimal. Generally there is no classification of inmates due to lack of space and buildings.

113. The Juvenile Training Centre does not have separate cells for tried and untried young persons. At present there are about 17 juveniles serving prison terms and 20 lawful detainees at the Juvenile Training Centre. Both categories are treated alike and participate in similar day-to-day activities. An anomalous situation also exists whereby when sentencing a child already being held for a period on remand in the Juvenile Training Centre, the remand

period is not considered to be part of the sentence period. In practice juveniles have no privacy by virtue of sleeping in communal cells.

114. The detention of children in need of care is unlawful and arbitrary, as there is no law that warrants detention on the basis of being in need of care.

115. In police stations there are separate cells for custody of juvenile offenders. However, in practice juvenile offenders are mixed with adult offenders in overcrowded police cells under very appalling conditions. This is often the child's first point of contact with harmful behaviour that can contaminate and desocialize the child. There are no separate cells or rooms set aside in the courts for children. However, some subordinate courts do sit as Children's Courts in some districts. Conformity with the Children's Protection Act of 1980 has, to a larger extent, been observed by these courts when sitting as Children's Courts. This includes hearing cases in camera in an informal setting, not publishing the proceedings of the case and hearing the matter in the presence of the parents or guardian of the child. When juvenile offenders are ferried from the police stations to the court, they are escorted in the same vehicles as adults. Even when juvenile offenders are transported to Maseru from the districts, they board the same vehicle as adult inmates from the districts. Lack of adequate financial resources is the major constraint to providing separate facilities for juveniles.

116. Juveniles in all places of custody are given an opportunity to communicate with their next of kin.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance and the child's evolving capacities

117. The State has the obligation to respect the rights and responsibilities of parents and the extended family in providing guidance to the child. The common law in Lesotho recognizes the rights, duties and responsibilities of parents and guardians to provide parental guidance to children. Under common law, parents are expected to provide for the basic social needs of children and their welfare. Parents have to provide children with food, shelter, clothing and cater for their education, health and overall social development. The State should also build schools, hospitals, clinics and provide recreational facilities such as parks and thus create an environment with infrastructure that will assist parents to care for their children.

118. Section 32, subsection (a), of the Constitution provides that Lesotho shall adopt policies designed to ensure that protection and assistance are given to all children and young persons without any discrimination for reasons of parentage or other conditions. Section 32, subsection (a), provides for State intervention where parents are unable to provide for the basic needs of children.

B. Parental responsibilities

119. The child has an inherent right to live with his or her parents. Parents also have an obligation to care for, maintain and provide for the social, mental, emotional and personal needs of their children. Parents have

the responsibility to provide food, shelter, clothing and cater for the child's educational needs. Parents have to ensure that their children get proper counselling for the spiritual, physical and emotional aspects of life. It is further the responsibility of parents to promote open and free communication between themselves and children, in order to cater for the child's welfare.

120. Parents have a primary responsibility to seek employment that facilitates provision of basic needs for their children. Where a parent subjects a child to abuse, neglect or abandonment, a child may be removed from the parents and State intervention may be provided through foster care, adoption or guardianship. This process is normally facilitated through social inquiry reports compiled by social workers and probation officers and placed before a judge to make an appropriate order. The High Court remains the upper custodian regarding children's rights and welfare.

121. Street children, in particular male children, are a growing problem in Maseru, the capital of Lesotho. Research has not yet been conducted to assess the magnitude of the problem of street children. However, in sporadic interviews conducted with some of these children the following main points were noted:

Most children run away from home because they are tired of the family environment, or because there is no peace in the family.

Children sometimes become street children to resist parental control, not because of poverty in the home; some children simply desire to be on the streets in order to earn themselves cash washing cars, pushing trollies and pick-pocketing.

In some instances a lack of parental care was the main reason.

122. NGO representatives suggested that before they can design any programmes addressing the problems of street children, it would be appropriate to conduct research to identify the root causes of the problem. Presently, the Homemakers Association and the Girl Guides Association are trying to counsel street children and encourage them to develop an interest in the family as an element of unity. During debates on the report it was further emphasized that sociologists need to be involved and assist young people to develop coping mechanisms in life.

C. Separation from parents

123. The Convention provides that children and their parents have a right to leave any country and enter their own for purposes of reunion and maintenance of the child-parent relationship. In Lesotho this is supported by the Constitution of Lesotho which accords the right to respect for private and family life in section 11 (1) and section 7 (1) which provide for the right to move freely throughout Lesotho and the right to enter and leave Lesotho, and for immunity from expulsion. The enjoyment of these rights is however restricted in the interest of public order, safety, public morality or public health. Free movement for purposes of reunion and maintenance of the child-parent relationship can only be sustained if both are in possession of a

valid travel document, subject to the consent of the parent or guardian in the case of a child. The Aliens Control Act No. 19 of 1967 also facilitates the enjoyment of this right through proper regulation of movement through acquisition of visas and residence permits.

124. In accordance with the Aliens Control Act of 1967 a child under the age of 16 cannot get a travel document except with the permission of the Minister. In such situations the parent applies for a travel document on behalf of the child (restrictions on women applying for travel documents for their children are mentioned under Preservation of identity).

D. Recovery of maintenance for the child

125. In Lesotho, maintenance is governed by customary, common and statutory laws. Liability for maintenance varies depending on whether customary, common or statutory law is applied. There is, however, a direct conflict between common, statute and customary laws, with each system imposing different duties. Under common law, the father's duty of support extends to his illegitimate children, while under customary law the liability for illegitimate children rests with the mother's family. The father of an illegitimate child is only obliged to pay damages to the mother's family for seduction, payment of which is a herd of cattle not exceeding six. The duty of support under common law is mutual. The children are entitled to be maintained until they reach majority or are economically self-supporting.

126. The Deserted Wives and Children's Proclamation No. 690 of 1959 makes provision for both civil and criminal proceedings where there is failure to maintain the child. Section 5, subsection (2), of the Proclamation provides that "if a person legally liable to maintain a child repeatedly assaults or cruelly treats the child, or is a habitual drunkard and therefore fails and refuses to supply the child with food, clothing, lodging or medical aid when able to do so and as a result the child is living apart from such person, such child shall be deemed to have been deserted". Under section 6 of the Proclamation a claim for maintenance can be lodged through summons, requiring the defendant to show cause why he should not pay maintenance for the support and welfare of the child. This complaint is normally made through the office of the Clerk of Court or the Legal Aid Counsel. The summons are then served upon the defendant personally by the Messenger of Court, or by means that will reach the defendant. Once service of process is done, an inquiry is made regarding whether the person liable to maintain is able to do so. The court may grant judgement in favour of the plaintiff or complainant and issue an order directing the defendant to pay at such intervals, in such manner and to such person as the court may think fit, a reasonable sum or allowance as maintenance.

127. Legislation exists obliging countries within the region, especially the Republic of South Africa, to observe the enforcement of maintenance orders emerging from countries like Lesotho. In practice difficulties exist in that maintenance remittances are sometimes not forthcoming, or upon receipt by an authority designated by the court they are used illegally and without authority by such authorities. In addition, maintenance orders are transmitted to the relevant authorities in South Africa and such orders get enforced by employers of those men who have tried to vanish, escaping their

obligation to maintain. In cases where maintenance orders seem not to be enforced women (usually mothers) often travel to the place of residence of the debtor to recover maintenance personally. In cases where maintenance is to be recovered from a government employee, although the law provides that a government order on the salary may be made (called a garnishee order), there is great reluctance on the part of Government to effect such orders. (See case of Makhahliso Ts'ilo v. Thabo Ts'ilo, annex.)

128. Maintenance for children in most divorce cases is determined uncontested, in that the parties always settle the matter by Deed of Settlement. In the case of Manthabiseng Masuoane v. Letsatsi Masuoane CIV/T/448/89 involving divorce proceedings by a Deed of Settlement the parties agreed that since custody of the minor child was awarded to the plaintiff, the defendant (the father in this particular case) be obliged to provide nominal maintenance of M1.00 per month, but the defendant was free to increase maintenance as he wished. Similarly, in the case of Mohau Monoko v. Makhotso Monoko CIV/T/649/87, through a Deed of Settlement and by agreement the custody of the minor child was awarded to the defendant (the mother in the particular case) and nominal maintenance of M10.00 per month was granted, subject to future review. Masechaba Mofoka v. Moiloa Mofoka CIV/T/663/92 is yet another example of a Deed of Settlement agreed on 25 May 1996. In this case, in which custody of the minor children was granted to the plaintiff, the defendant was ordered to pay nominal maintenance of M1.00 per month, payment of which would be adjusted from month to month depending on the financial means of the defendant at a given time. In Mankopane Baile Mokone v. Joel Letele Mokone CIV/T/418/92, in a judgement delivered by Justice J.L. Kheola on 28 February 1995, the defendant was awarded the custody of three children, one of whom was over 21 years of age. The plaintiff (J.L. Mokone) was ordered to maintain each minor child at the rate of M200.00 per month, bringing the total maintenance to M600.00 per month for the three children.

129. The Deserted Wives and Children's Proclamation also empowers the court to vary a maintenance order upon proof that the means of the defendant have altered since the making of the original order, or any subsequent order, varying it for a good cause. The court is also empowered to discharge such order or any variation thereof. A court order to pay nominal maintenance of M1.00 per month serves the purpose of ensuring that maintenance is ultimately paid. Despite the legislative and common law provisions on maintenance, however, children are still faced with difficulties regarding enforcement of maintenance orders in their favour. Delays exist in issuing the summons, while the father's whereabouts are being traced. The migratory labour system, general mobility of people and poor service of court process are all factors that hinder enforcement of maintenance orders.

E. Children deprived of a family environment

130. Article 20 of the Convention stipulates that the State is obliged to provide special protection for a child deprived of a family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. In providing alternative family care for children deprived of a family environment, the primary consideration should be the best interests of the child. During debates it was pointed out that in countries

such as the United States of America, cases existed where children have been separated from their biological parents in preference for foster parents.

F. Adoption and periodic review of placement

131. Article 21 of the Convention states that where State parties recognize or permit a system of adoption, that system shall ensure that the best interests of the child are the paramount consideration. Any such adoptions shall only be authorized by competent authorities. The adoption in such circumstances shall be processed only in accordance with applicable law and procedures. In accordance with subsection (b) of article 21, inter-country adoptions may only be considered as an alternative means for a child's care where a child cannot be cared for in the child's country of origin.

132. Safeguards through concluding bilateral and multilateral agreements shall ensure that the placement of the child in another country is carried out by competent authorities. Any separation advocated has to be in the best interests of the child. Adoption in Lesotho applies where a child is in need of care. Statutorily, the Adoption of Children Proclamation No. 62 of 1952 provides a legal criterion for the adoption of children. Section 2 (1) of the Proclamation spells out the categories of persons who are eligible to adopt a child. These are a husband and his wife jointly; a widower, widow, unmarried or divorced person; a married person who is separated from his or her spouse by judicial decree.

133. The age of the adoptive parents and adopted child have been stipulated in section 2 (2) of the Proclamation. The adoptive parents must be at least 25 years older than the child to be adopted, in order to be eligible. The Proclamation further provides that a child of 16 years or more shall not be adopted, irrespective of whether or not the adoption is processed jointly or not. Flexibility only applies where the child to be adopted is a relation or offspring of one of the adoptive parents. For example, where a child is born to one of the spouses in a marriage, the couple may wish to adopt the child jointly.

134. The Adoption of Children Proclamation also makes provision for other legislative and procedural requirements that should be adhered to when processing an adoption application. The adoptive parents or parent shall lodge an application in the court of the district in which the adoptive parents or parent reside. The adoptive parent(s) must write an application letter indicating the reasons why such adoption is sought. In considering adoption applications the Social Welfare Department has the authority to give preference to couples who have no children of their own and have been proved to be medically unable to have children of their own. This is to safeguard children against possible discrimination if they are adopted into a family that already has children. Before the court can grant an adoption order, the court has to be satisfied that the applicant(s) is/are qualified to adopt the child.

135. Section 3 of the Adoption Proclamation requires that the adoptive parents must be of good repute. This requirement entails that the adoptive parents must be fit and proper persons to be entrusted with the custody of the child. They must possess adequate means to maintain and educate the child and

must serve the interests and welfare of the child. In determining whether or not an adoption should be granted, the best interests of the child is the paramount consideration. The adoptive parents also have to prove that they will be in a position to provide for the physical, emotional and social needs of the child, that they are in a position to provide the child with adequate good clothing, a safe and comfortable place in which to live and sleep, and with love and a feeling of being wanted and accepted.

136. Once there is proof beyond reasonable doubt that the adoptive parents can provide for the child, an application is made to the High Court with social background reports on the child and the adoptive parents. After the granting of an Adoption Order by the High Court, the Department of Social Welfare has to monitor the welfare of the child in the adoptive home through regular home visits. A report is sent to the High Court every two years, until the child is above 18 years of age. An adoption application can only be lodged with the High Court where consent to the adoption has been granted by both parents of the child, or a single parent, where the child is born of such a parent.

137. In situations where the immediate parents of the child are dead, the law requires that the guardian of the child must give the requisite consent. If the child is 10 years of age or over, the child's consent may be material. Consent given to an adoption must be in writing. The consent given shall also set out the names of the adoptive parents. In accordance with section 5 (1), the legal effect of an Adoption Order shall be to confer the surname of the adoptive parents on the adopted child. This is done to give the child an identity. The Department of Social Welfare normally assists in the handling of adoption applications and also provides counselling services to parents who are giving their children up for adoption. This is mainly to help alleviate the stress that goes with such a decision.

138. In practice foster care placement always precedes adoption. Foster care is normally for a two-year period. The foster-care period can be renewed for a further two years. Foster-care placement is normally done through the courts. It is only after two years of foster-care placement that an adoption application is processed through the High Court, if the foster parents so wish. In inter-State foster placements social workers of the host country normally make home visits to follow-up on the child. Social workers normally make reports on the environmental conditions in which the child lives. The reports are subsequently communicated to the social workers of the country from which the child originates. So far, the Department of Social Welfare has not had any disappointing reports on inter-State foster placements.

139. The Adoption Proclamation still constitutes a major constraint to the granting of adoptions. The law as it stands only allows Europeans to adopt. The only option for Africans to adopt exists in customary law. The Law Reform Commission established by the Law Reform Act of 1993 will hopefully redress such legal restrictions through proper amendments. Section 9 of the Children's Protection Act, which is closely linked to the Adoption Proclamation, needs to be harmonized with that legislation. In practice, though, despite the limitations embedded in the law, Africans, in this context Basotho people, do adopt under the Proclamation.

140. The principle of law governing adoption was clearly expounded in the 1983 case involving the adoption application of Remaketse Meriam Mochochoko. In that case, a subordinate court consented and authorized the removal from Lesotho of the adopted child Remaketse by the adoptive parent who originated from the United States of America. In quashing and rescinding the Adoption Order the High Court specified that before an adoption is made, the magistrate should take additional evidence on oath as contemplated in section 3 (5) of the Adoption Proclamation. The Court went further to indicate that adoption must serve the interests and welfare of the child. Before it would authorize the removal of a child to a foreign country on a permanent basis, it must be satisfied that the Government of the country concerned was prepared to admit the child. The Court had a responsibility to all children under its jurisdiction, as it was the upper guardian of all minors. It could not permit the life of a child to be changed without due and proper inquiry. The law as it stands must have regard to the welfare of the child.

141. Completed and incomplete applications for foster care between the years 1992 and 1997 by Africans and Europeans within Lesotho have been as follows:

Table 1

Completed and incomplete applications for foster care between 1992 and 1997 by Africans and Europeans within Lesotho

Race	Year	Completed cases	Incomplete cases*	Total
Africans	1997	7	0	7
	1996	7	0	7
	1995	4	3	7
	1994	2	7	9
	1993	4	1	5
	1992	3	-	3
Europeans	1997	-	-	-
	1996	-	-	-
	1995	-	2	2
	1994	2	-	2
	1993	2	1	3
	1992	-	-	0
		31	14	45

* Incomplete cases are a result of incomplete applications. Foster-care applications may be incomplete because supporting documents like the birth certificate of the child are not available.

G. Illicit transfer and non-return

142. In accordance with article 11 of the Convention, the State has an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or a third party. Lesotho has not entered into any bilateral agreements to combat illicit transfer abroad. Within the general context of extradition treaties that Lesotho has entered into with several countries, persons who engage in the illicit transfer and non-return of children commit a crime and are in violation of the law.

143. Lesotho is not a party to the International Convention for the Suppression of the Traffic of Women and Children of 1921, as amended. The Inter-ministerial Committee on Human Rights recommended, however, that a positive measure be undertaken by Lesotho to become a party to this Convention.

H. Protection from abuse and neglect

144. Articles 19 and 39 of the Convention provide that the State shall protect the child from abuse, neglect and all forms of maltreatment. Where child abuse and neglect exist, appropriate social programmes for the prevention of abuse and treatment of victims, including reintegration, should be established. Physical neglect occurs when a child's health or safety is endangered because of lack of adequate food, clothing, shelter and supervision. This type of neglect retards the physical growth of children and leads to malnutrition. Several children are also found abandoned every year in Lesotho. For children who are abandoned, the Department of Social Welfare works with Lesotho Save the Children, which serves as a place of safety for neglected and abandoned children. The refuge is normally on a temporary basis while the social workers consider a child's case. For orphaned children, the Department of Social Welfare places children in the Save Our Souls (SOS) children's village and Mants'ase Orphanage. Orphans are customarily taken care of by the extended family. Between 1996 and 1997, 42 children were admitted to the SOS village through the Ministry of Health and Social Welfare. The children are normally placed there for care and safety. The Government itself does not have its own orphanage. Some assistance to neglected and abandoned children from the Department of Social Welfare comes in the form of food packages, clothing, blankets and an allowance to children found eligible for such services. In 1995, a service was started whereby school fees (primary, high school and tertiary level) were provided for some 500 school children.

145. Reported cases of child abuse and child neglect between the years 1992-1997 in the district of Maseru are indicated below.

Table 2

Reported cases of child abuse between 1992-1997 in Maseru district

Year	Form of Abuse	No. of cases
1992	Neglect Physical, emotional and psychological Abandoned child Sexual	8
1993	Neglect Physical, emotional and psychological Abandoned children Sexual Child in need of care	14
1994	Neglect Physical, emotional and psychological Abandoned child Sexual	15
1995	Neglect Physical and psychological Abandoned	26
1996	Neglect Physical and psychological Abandoned	26
1997	Neglect Physical and psychological Abandoned child Pregnancy	19

146. Since the Department of Social Welfare is centralized in Maseru, this means that only cases in Maseru get reported. Cases in the other nine districts do not get reported as the institutional and administrative machinery for such purposes is non-existent. Social workers have recently

been deployed to the districts to monitor children's welfare. The major reasons for abuse were related to domestic violence whereby male or older members of the family abused other members.

VI. BASIC HEALTH AND WELFARE

A. Children with disabilities

147. Section 33 of the Lesotho Constitution provides that with a view to ensuring the rehabilitation, training and social resettlement of disabled persons, Lesotho shall adopt policies designed to provide for training facilities, including specialized public and private institutions for such persons. Policies shall also be adopted which aim at placing disabled persons in employment and encourage employers to admit disabled persons to employment. Besides the constitutional provision there is no specific legislation guaranteeing the rights of disabled persons. The Department of Social Welfare is presently working on disabled persons legislation with the Lesotho National Federation of Organizations of the Disabled (LNFOD).

148. Government has declared its policy on disabled children through the Department of Social Welfare. The policy aims are:

To reduce the dependency of disabled children on others, in order to make the best use of their skills;
To promote self-reliance;

To provide rehabilitation services for disabled persons with special needs;

To expand skills training services for a large number of disabled persons;

To establish a revolving fund that assists disabled persons to start self-employed projects;

To achieve the integration of disabled persons into education, training and employment programmes alongside non-disabled persons;

To promote public education concerning the rights of persons with disabilities.

149. The Department of Social Welfare, through its Rehabilitation Unit, assists disabled persons of working age to acquire work skills, attitudes and habits that will enable them to produce and respond to service needs and labour market trends in their respective areas. Disabled persons are provided with help and guidance on social problems which may interfere with their rehabilitation and eventual reintegration. Efforts are also made to build up the person's self-confidence and motivation. Disabled persons are provided with medical, psycho-social and vocational assessments suitable for different kinds of training and work. Disabled persons are helped to function within an integrated system of rehabilitation service. Delivery of this service makes the best use of relevant resources for the identification of rehabilitation needs, training, placement and supervision of each disabled person.

150. The Social Welfare Rehabilitation Unit also operates a revolving loan fund scheme for disabled persons. The scheme aims at helping disabled persons to start modest self-employment businesses. This scheme has been found useful as it contributes to personal and family income and to the national economy.

151. The Rehabilitation Unit further assists disabled persons with equipment. This is done on "most needy and destitute disabled persons" basis. Wheelchairs, crutches, calliper splints and many other items are provided.

152. Aside from what the Department of Social Welfare does for disabled persons of working age, there are welfare organizations that also provide services for disabled persons. Institutions include St. Angela home for the disabled, Morapeli home for disabled girls, St. Paul's School for the deaf, Hlokomela Bana and the Lesotho Association of Mentally Handicapped Children. These welfare organizations provide accommodation for disabled rural-based children who are not able to reach their community schools. Some of these organizations provide school fees to children whose parents are not able to pay fees. All programme efforts for disabled children need to be strengthened with financial resources.

153. The Special Education Unit of the Ministry of Education also monitors an integrated education programme for the disabled. The programme aims at integrating children with disabilities into ordinary schools, raising awareness regarding disabled children's right to education and training teachers to work with children with different disabilities. In order to realize these aims teacher-training materials have been produced: assessment booklets and syllabi on hearing impairment, visual impairment, physical handicaps and mental retardation. The Unit also intends to produce a parent-training manual to enable parents of children with special needs to deal openly with their children's disabilities.

154. The Special Education Unit also identifies and assesses children who are suspected of being in need of care. Individual programmes are then devised to suit their needs. Some children are referred to specialized service providers (see below). The Unit further monitors and supervises regular schools that already integrate children with disabilities and special needs.

155. The Resource Centre for the Blind, in Maseru, has approximately 30 children who spend up to three years learning Braille prior to fully being integrated into adjacent primary schools. There are four qualified teachers for the blind to assist in undertaking this programme.

156. Rehabilitation services available through the Ministry of Health for physically disabled people, including children, are orthopaedic surgery, physiotherapy and the fitting of appliances. There is no occupational therapy department that caters for all kinds of disabilities.

157. The Ear, Nose, Throat and Ophthalmic Departments in the Ministry of Health are able to prevent and reduce hearing and visual impairments. A qualified speech therapist also offers rehabilitation in the form of speech therapy, audiological assessment and the fitting of hearing aids. However, the Lesotho National League for Visually Impaired Persons offers mobility training, as this is not offered through the hospital.

158. Children with disability, especially those with mental disability, are said to experience discrimination in some institutions. There are some institutions that advertise in their brochures that they admit all children irrespective of disability, but when children with disabilities seek admission they are refused entry. Teachers say lack of special training skills is one reason for this. Schools not catering for children with special needs tend to feel that they would do more harm than good to disabled children if they admitted them. On this issue, the Inter-ministerial Committee on Human Rights recommended that the State should assume more responsibility for providing education and care for children with special needs. Appropriate facilities need to be put in place, as these are presently lacking.

159. Non-governmental organizations have also been instrumental in assisting disabled children to live fully integrated lives in society. Three community-based rehabilitation centres have been established. These have been successful at raising awareness through training on disability issues, identifying disabled children and advising parents on simple rehabilitation techniques.

160. In all government regional hospitals, including private hospitals under the Christian Health Association of Lesotho (CHAL), physiotherapy assistants who have received informal in-service training undertake rehabilitative work for the disabled. Some hospitals such as Paray have orthopaedic workshops which make simple but effective equipment. However, due to lack of adequate facilities disabled children still have to be referred to the central hospital for more sophisticated equipment.

161. In Lesotho, there is an active organization of disabled people that has developed over the last five years. The Lesotho National Federation of Organizations of the Disabled (LNFOD) is an umbrella body for disabled people. This Federation has organized successful workshops geared towards helping disabled people gain confidence and new skills. LNFOD aims at addressing problems disabled persons experience regarding transport and mobility, access to public buildings and employment, as disabled people currently have very limited access to employment opportunities.

162. A concern was raised that most existing public buildings do not have facilities that accommodate the needs of people with disabilities. In light of the deliberations of the fiftieth session of the United Nations General Assembly in the Third Committee, under the item on social development, it was recommended that legislation promoting and protecting the rights of children with disabilities must be put in place including the placement of facilities that make life easier for persons with disabilities. In this regard, it was noted that the Department of Social Welfare was already in the process of drafting legislation based on the United Nations Standard Rules on the Equalization of Opportunities for Persons with disabilities. While the effort of drafting legislation to protect children with disabilities was acknowledged, the real problem of implementation was also foreseen. A major constraint in implementing socially oriented legislation is the lack of financial resources.

163. It was emphasized that children, with or without disabilities, should have equal opportunities and equal access to education, recreation, religion

and all other rights. Supportive special facilities must be put in place to maximize access to equal opportunities by children with disabilities.

164. In Lesotho it is cultural practice to hide children with disabilities. Consequently, even estimated statistics on disabled children are not available. A countrywide comprehensive survey was recommended as a tool that would ascertain the real magnitude of the problem. It was noted that available statistics are not very comprehensive. An association of approximately 200 parents who have children with disabilities has been pressurising Government to find the real number of disabled children in Lesotho. It was recommended that Government should at least build one formal institution for children with disabilities, which should be very well equipped. Further, the Inter-ministerial Committee emphasized that such formal institution should not remove children from the home environment, except in situations where the child is either abandoned or orphaned.

B. Health and health services

165. The child has a right to the highest standard of health and medical care (art. 24). Institutionally, health programmes for the survival and development of the child exist between the Government of Lesotho and cooperating partners such as the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and others. These programmes are aimed at achieving the goals of the World Summit for Children and the World Declaration on the Survival, Protection and Development of Children. Programmes supporting and promoting the survival and development of the child are mostly implemented by the Ministry of Health. These include:

1. Expanded programme on immunization (EPI)

166. The expanded programme on immunization aims to provide universal vaccination to all children. Vaccines are also provided to practising medical doctors so that they can administer and supply these to children without incurring any expenses. This is a promotional strategy aimed at achieving high coverage of the EPI programme and use of antigens.

167. Information on EPI shows that the coverage for fully immunized children has improved significantly, with coverage from 67 per cent in 1990 to 71 per cent in 1993. Antigen coverage rate has also remained high. There has been a decline in reported cases of measles.

168. Higher coverage rates of the EPI programme have not been achieved mainly due to management constraints and other related problems. Reasons for non-immunization include inaccessibility of health facilities, lack of finances to pay for immunization, fear of child reactions to immunization, vaccines being out of stock, shortage of staff at clinics and vaccines being administered at wrong intervals.

169. In order to improve coverage specific campaigns are being embarked upon:

Advocacy for child immunization;

Intensified training of those involved in immunization activities;

Mobile vaccination campaigns covering high-risk catchment areas;

Replacing old vehicles with new ones, in order to facilitate supervision and follow-up of the EPI disease surveillance.

2. Acute respiratory infection (ARI)

170. The ARI programme aims at improving case management. Hospitals are now provided with hospital oxygen concentrator machines to select oxygen from the atmosphere when treating children.

3. Control of diarrhoeal diseases(CDD)

171. The CDD programme aims at preventing and controlling dehydration in children caused by diarrhoea. This programme is mainly administered for the under-fives. Measures to control CDD are in progress. These include training of community health workers on improved management of diarrhoea and distribution of oral rehydration salts (ORS). Oral rehydration treatment (ORT) corners are also being established to enable mothers to administer ORS in the home, for control and management of the disease. Links between diarrhoeal diseases and child nutrition are being made. A decline in weight might be attributable to a bad feeding programme, which then leads to diarrhoea. When dehydration takes place a facility is immediately suggested by health personnel for treatment of the child.

172. Effective detection and monitoring of diarrhoeal diseases require that training on CDD be intensified for health workers. The CDD programme also needs improved transport facilities to conduct regular supervisory visits to health facilities and to maximize establishment of ORT corners, as there is limited knowledge on treatment and control of diarrhoeal disease.

173. Children from a Maseru-based centre for underprivileged children were admitted to hospital in July 1996 with diarrhoea-related ailments. After receiving medical treatment the children were sent back to the same place and a recurrence of the disease took place. The Government is taking very serious steps to address this problem. The Inter-ministerial Committee on Human Rights recommended that minimum standards and guidelines should be adopted in respect of places that take care of children. The Ministry of Health has to enforce and ensure the maintenance of health standards in such places of childcare.

4. Iodine deficiency disorders (IDD)

174. The IDD nutrition programme focuses on the prevention of iodine deficiency through the distribution of iodine tablets. The distribution of iodine tablets is a short-term measure and the main long-term strategy is to bring iodized salt onto the market. In order to realize this long-term strategy it is essential to enact legislation against the distribution of non-iodized salt. The Ministry of Trade and Industry is to monitor adherence to iodized salt legislation in cooperation with other concerned parties.

5. Maternal and child health and family planning programme

175. The maternal and child health (MCH) and family planning programmes aim at promoting child survival by providing care facilities for the mother during pregnancy and facilitating proper spacing and planning of a family through the use of family planning methods. The MCH programme encourages all pregnant women to attend ante-and post-natal clinics and have all births supervised by trained health personnel. Women are also encouraged to have all high-risk pregnancies followed and to deliver at health facilities.

6. AIDS control programme

176. The AIDS control programme is another programme that focuses on awareness-raising and establishing routine testing. NGOs have also been particularly active in this area. CARE International, the Catholic Secretariat, the Christian Council of Lesotho; the Red Cross, Lesotho Planned Parenthood Association and CHAL are all active in AIDS prevention and education. CHAL also provides HIV/AIDS rapid test kits to private and government hospitals. These organizations have joined together to form a committee known as Lesotho Network of AIDS Service Organizations (LENASO).

7. Nutrition

177. The nutrition and household food security programme, through a multisectoral national initiative, aims at enhancing food security and monitoring the growth rate in children. The Lesotho Breastfeeding Promotion Network has also embarked on advocacy regarding breastfeeding exclusively for the first four to six months of a child's life. A full-cycle breastfeeding programme is, however, encouraged for a minimum of two years.

178. Despite interventions made, the infant mortality rate is estimated at 82/100 and the child mortality rate at 55-60/100. These figures do remain relatively high, despite the interventions that are currently undertaken. Diarrhoea, acute respiratory infection and malnutrition also remain the main causes of infant and child mortality.

C. Social security and child care services and facilities

179. Articles 26 and 18 (3) of the Convention provide that the child has the right to benefit from social security, including social insurance. Children of working parents in addition have the right to benefit from childcare services and facilities.

180. The Department of Social Welfare provides public assistance to all needy and destitute persons, including children. The assistance comes in the form of food packages, clothing, blankets and an allowance to persons and children found eligible for assistance. School fees are provided to children whose families are not able to send them to school. These services started in January 1995.

181. In view of the increase of the HIV/AIDS virus, an increase of orphans was anticipated. Consequently, it was felt that there was a need to have in place a social insurance system. The Department of Labour asked the

International Labour Organization for assistance to implement a social security scheme. The Labour Commissioner was to have attended a workshop in Turin, Italy, in pursuance of the request. In this respect, international assistance was said to be vital.

182. A representative of the Bureau of Statistics stated that the Department of Social Welfare had sought information from the Bureau regarding statistics on elderly people who are not in any form of pension scheme. However, the age limit was not indicated. This facility, though not directly intended to benefit children, would have an indirect impact which would enable the reallocation of resources by those families directly taking care of their elderly from the elderly to the children.

D. Standard of living

183. Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. Parents in this respect have the primary responsibility to ensure that the child has an adequate standard of living. State responsibility can include fostering conditions that create employment opportunities and self-reliance projects for parents to be able to attain a satisfactory standard of living that enables them to provide for children. Through the Ministry of Agriculture, initiatives have started through the Household Food Security Programme to upgrading the standard of living. UNICEF is also supporting this initiative. Home gardens are being encouraged for the planting of vegetables and fruits on plots adjacent to the homestead. Seeds, fencing and other inputs have been provided to a number of communal and home gardens.

184. The Ministry of Agriculture collaborates with other ministries, such as Health, on nutrition-related issues. Children experiencing food insecurity are identified. Sometimes food distribution patterns affect the accessibility of food for children. This task is not only carried out by the Ministries of Agriculture and Health but also Home Affairs, and NGOs interested in child issues also participate. The nutrition programme has not been able to collect reliable data due to high staff turnover within this section. Therefore, it is difficult to say in certain terms what impact household food security and the pattern of food distribution have had on children.

185. Nutrition programmes sponsored by the Government are complemented by NGOs such as World Vision and Development for Peace Education. The GTZ - Matelile project in Mafeteng is sponsored by the German Government and has a component that concentrates on the welfare and well-being of children, including child nutrition. The Roman Catholic Church is also doing a lot of work in relation to children.

186. Supplementary food distribution has been used to improve child nutrition from time to time. However, it has been discovered that often food intended for children is eaten by adults in the family, in particular the father.

VII. EDUCATION AND ITS AIMS

187. Section 28 of the 1993 Constitution of Lesotho states that education in Lesotho aims at developing human capacity to attain sound economic development and that education shall be available to all. Government policy intends to ensure that:

(a) Education is directed to the full development of the human personality and a sense of dignity and strengthening of respect for human rights and freedom;

(b) Primary education is free and compulsory for all; measures are taken to encourage regular attendance at schools and the State should find ways to subsidize needy children;

(c) Secondary education, including technical and vocational education, is made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(d) Higher education is made equally accessible to all on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education, and attempts should be made to reduce the number of drop-outs;

(e) Education of the child is directed to the development of personality, talents, mental and physical fitness. It is to include early childhood (ages 0-2 and 2-5). Facilities and opportunities are to be provided to achieve the above;

(f) Schools for children are slowly being established in villages and are managed by professionals;

(g) In recognition of working mothers as primary caretakers, it is proposed that maternity leave should be increased from 30 days to 90 days. Mothers should be fully paid by the Government or the employee. The Government should also provide a social security scheme from which the mothers can draw income during their leave days;

(h) Culture is a component of education. Cultural activities like circumcision are not to be a hindrance to a child's right to education. It is proposed that proper medication be administered at circumcision schools. Children should be allowed to decide at 21 years of age whether or not they want to be circumcised;

(i) Every child is provided with opportunities and facilities that enable him or her to develop physically, mentally, morally, spiritually and socially in a healthy manner and in conditions of freedom and dignity;

(j) A child who is physically and mentally handicapped shall be given the special treatment, education and care required by his or her condition and which is in the child's best interests;

(k) Education aims at being free in order to accommodate street children. Parents give their children moral training and guidance on virtues they need for their future lives;

(l) There is a working relationship between the Government and the Churches. Causes of conflict have to be solved so that children can be admitted to schools without discrimination;

(m) Fundamental education is encouraged for those persons who have not received or completed their primary education. This involves non-formal education and development education.

188. In Lesotho, in practice, it is the duty of the parent(s) of a school-going child to ensure that the child receives full-time education suitable to his or her age, ability and aptitude. The education system requires that every person who is concerned with the education of a child shall ensure that a child is protected from practices that may foster racial or other forms of discrimination or prejudice. Instead, conditions which foster tolerance, friendship and brotherhood among children should be promoted.

189. The school-pupil population is increasing at a rate that the present school facilities cannot accommodate. As a result, schools or classrooms have mushroomed even next to liquor sheds, where the spiritual and moral well-being of the children is affected.

190. The Education Act of 1995 outlines the proper management of schools at primary, secondary and tertiary levels. However, the Act has caused some conflict between the Government and the Roman Catholic Church, which feels the Government is usurping its authority in the management of mission schools.

A. Early childhood development (ECD)

191. The ECD programme in Lesotho is considered an important sector aimed at achieving the early development and education of children. Its emphasis is on care, stimulation, good health and proper nutrition for the under-fives. The average ECD school comprises around 30 children. Approximately 13 per cent of the 2- to 5-year-old population is in some form of day-care centre. The children aged 0-2 of working parents are excluded from the ECD programme. Lesotho does not yet have facilities for day care. Good quality pre-schools help pick up potential learning difficulties and problems early, help prepare children for primary school and ensure that children are adequately nourished and cared for. While the ECD programme has notched up achievements in terms of enrolment, care, stimulation, good health and proper nutrition of the under-fives, some problems have been noted to exist. Since these pre-school day-care centres have never been fully evaluated, the problems facing them are drawn from the impressions of the staff of the Early Childhood Development Unit in the Ministry of Education and the Lesotho Pre-school and Day Care Association. The Education Inspectorate has in some cases found children in uncomfortable places like garages or very cold buildings. Such conditions create a negative impression in children's minds about education.

192. Current problems facing ECD in its efforts to equip young children with pre-school skills, knowledge and techniques are as follows:

(a) The quality of care is variable in pre-schools. Some of the early childhood centres are well run with stimulating and appropriate activities for children. Others are overcrowded with very few facilities and activities. In addition, some practise corporal punishment which goes against the spirit of the Convention;

(b) The infrastructure is also sometimes poor, lacking in latrines, running water, space and heating. The care offered to children in such places is questionable. In addition, it is difficult to teach children about hygiene and related topics in the absence of requisite facilities. This is often caused by absence of funds and/or lack of initiative;

(c) The age range in pre-schools is very wide. Children under two years who should not be admitted to pre-schools often are admitted. Children over six years and well over-age are sometimes sent to pre-schools until the ages of eight to nine because their parents cannot afford primary school. Some children have to wait until these ages in order to be able to walk long distances to primary schools;

(d) Some day-care centres are owned by Government and are officially registered. An increasing number of private and community schools also exist. The latter schools are in most cases not registered. Varying levels of parental involvement in pre-schools also exist, thus leading to more or less input.

193. No recognized qualifications for day-care teaching exist. ECD centres are sometimes established for the wrong reasons, such as making money, and not in response to a legitimate need. The ECD programme has been incorporated in the mainstream of education through the Education Act of 1995 which provides for the registration of ECD centres, standardizes procedures and sets minimum standards for both curricula and staff qualifications.

194. Most children are within a one- to two-hour walk from a primary school. For those furthest away this is not a very healthy situation as they start the day's learning process in a state of fatigue. Primary schools vary from having less than 25 children to having over 650. The largest primary schools are in Maseru and the smallest ones in the mountains. The schools in the mountainous areas have no proper roads to facilitate access. The vast majority of these schools are reached by dirt track. Over half (55.1 per cent) of these schools also have no clean water supply. Most have to rely on fetching water some distance away from the school. Linked to this problem is the issue of lack of sanitation facilities.

B. Non-formal education

195. Non-formal education or adult education is often an educational programme offered for early school drop-outs. This type of education involves activities such as literacy, numeracy and development activities. The programme is run by the Ministry of Education through its institution, the

Lesotho Distance Teaching Centre, but there are a number of NGOs also involved including Development For Peace, Lesotho Association for Non-Formal Education and others.

196. Non-formal education has become a practical norm. Literacy and numeracy programmes have increased although they operate on a limited scale. Costs to sustain these programmes have also increased. Local NGOs have shown great interest in non-formal education programmes. Success in this area is dependent on a very clear mission and strong central political backing.

197. A series of reforms aimed at reducing the high drop-out and repetition rates are in place and some progress is being made. The 1996/97-1998/99 Sector Plan focuses on improving and expanding vocational and technical education in order to integrate the retrenched miners and disadvantaged groups, such as herdboys and out-of-school learners. The present vocational and technical training in the three major institutions (Lesotho Distance Teaching Centre and two NGOs) does not prepare graduates of these institutions for self-employment, but rather for employment in enterprises in the formal sector. This has resulted in vocational training graduates remaining unemployed as formal sector employment opportunities are limited. There is a need, therefore, to focus efforts on providing skills that will enable graduates to find employment at the grass-roots level and to be self-employed.

C. Primary education

198. Basic primary education in Lesotho is desirable and available to all, but it is not yet free. It is, however, the long-term aim of the Government of Lesotho to provide all Basotho children with a guaranteed seven years of primary education. Once resources are available this strategy will be implemented. There are between 1,200 and 1,500 primary schools in Lesotho, distributed fairly evenly according to the population throughout the country. Over half (50.6 per cent) of the schools have no latrines. When comparing schools in the mountains with those in the lowlands, 60 per cent of those in the mountains have no latrine facilities, while the figure is only 14.2 per cent for Maseru. The absence of a clean water supply and latrine facilities means that any health messages taught in schools are not likely to be absorbed properly by children.

199. Many primary school classes lack certain key facilities. Fewer than half the pupils are seated at a desk, around 20 per cent have chairs but no desks, and around 30 per cent have no chairs (national average).

D. Secondary schooling

200. Many secondary schools do not have the basic facilities required to provide an adequate education at secondary level. The distribution of facilities is not clear-cut. There are some well-equipped schools in the mountains, while in the lowlands there are some very poorly equipped schools.

Table 3

Facilities in secondary schools, by district

District	Schools	Classrooms	Labs	Workshops	Library	Dining hall	Kitchen	Pit latrine	WC
Butha Buthe	15	111	14	6	3	2	11	15	3
Leribe	37	280	29	17	9	7	20	32	9
Berea	22	168	18	13	6	5	13	20	4
Maseru	41	401	56	36	29	14	28	23	28
Mafeteng	23	158	20	11	14	8	15	18	4
Mohale's Hoek	15	120	18	10	8	5	11	12	7
Quthing	12	72	9	4	3	2	5	10	4
Qacha's Nek	6	33	8	2	3	2	4	5	3
Mokhotlong	46	8	6	2	2	2	6	6	1
Thaba Tseka	30	7	4	2	4	1	3	3	1

201. Most secondary schools in Lesotho are owned by the churches and a few others are operated by Government. On record there are 186 registered secondary and high schools spread throughout the country. Enough secondary schools exist, although the quality is extremely variable. Presently the Government is concentrating on improving the quality of these secondary schools. The curriculum in both the Junior Certificate and the Cambridge Overseas School Certificate tends to be academic.

202. Most secondary schools are now reluctant to offer lodging and boarding facilities, especially to boys. This has resulted in a decline of facilities that ease the learning process for children. Many schools had disciplinary problems with lodging and boarding and hence closed down their facilities. In comparison with primary schools, most secondary schools are purpose-built and they tend to have better facilities.

203. Lesotho does have institutions to accommodate students who are unable to proceed to secondary schools. There are vocational schools, including a Farmer Training Centre scheme and vocational centres specifically for the girl child. However, all these programmes are at cost to the child and/or parent.

E. Tertiary education

204. There are a number of institutions that offer tertiary education. The National University of Lesotho is a tertiary institution that offers courses in the social sciences, law, education and agriculture and caters for

about 1,600 students. The University also has an extramural department which offers courses in Maseru, Mahobong, Mohale's Hoek and Thaba Tseka in mathematics, business studies and adult education.

F. Leisure, recreation and cultural activities

205. Section 35, subsection 1, of the 1993 Constitution of Lesotho stipulates that Lesotho shall endeavour to ensure that every citizen has an opportunity to freely participate in the cultural life of the community and to share in the benefits of scientific advancement and its application. Subsection 2 of the same section provides that Lesotho shall adopt policies designed to protect the interests of any citizen in relation to any scientific, literary or artistic production of which he is the author.

206. The Ministry of Tourism, Sports and Culture is the custodian of artistic and cultural development programmes. Presently, there are four branches of the National Library, which fall directly under the supervision of the Ministry of Tourism. These branches are in the districts of Leribe, Mafeteng, Mokhotlong and Maseru. In these branches there are sections designated specifically for children and their interests. The furniture and display material are child-oriented in character. The main branch in Maseru has facilities for expression of children's artistic talents.

207. Lesotho is a full member of the World Intellectual Property Organization and subscribes to the protection of artistic and cultural achievements. A Copyright Act, which caters for all citizens, children included, is being finalized. This Act attempts to promote and protect the artistic talents of every citizen of Lesotho. The Ministry of Tourism is, however, very young in terms of handling artistic and cultural matters.

208. There is a need for a National Art Gallery which could cater for the artistic talents of everyone, especially children. In an art gallery children could have ample time, space and guidance to express their feelings through art. There is a need for a national museum, as cultural heritage is easily depicted by historical material from which children could learn about their heritage. One historical museum exists, at Morija, but is not known to most children. There is a need to create awareness regarding the existence of this museum.

209. There are no functional cultural centres at present. However, there are projects in the pipeline to create such centres, such as a cultural village depicting the traditional Basotho way of life, at Thaba Bosiu. Children are intended to play a major role in the creation of this cultural village.

VIII. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency

1. Refugee children

210. The rights of refugee children have not been specifically singled out in the Constitution. The Refugee Act No. 18 of 1983 in section 8 (1) recognizes the granting of refugee status to all family members. Section 8 (1) of the Act provides that where a person is recognized as a refugee, the Minister shall facilitate entry into Lesotho of any member of the refugee's family wishing to join them. Subsection (2) thereof further stipulates that where, subsequent to the granting of refugee status to a head of a family, the family is disunited as a result of divorce, separation or death, members of such family shall continue to reside in Lesotho and may, on application, be recognized as lawful residents in Lesotho under the Aliens Control Act or under the Citizenship Act or under this Act.

211. From 1992 to the present, 33 children were registered as unaccompanied refugee children. Families seeking refugee status have originated from Zaire, Uganda and the Sudan. The families seeking asylum have had children under 18 years seeking asylum also. In most cases, refugee men came to Lesotho single and later married in Lesotho. The children born out of such marriages have not had problems attending schools. The parents have jobs and are self-supporting and therefore cater for the schooling of their children. According to section 40 of the Constitution of Lesotho, women can retain their Lesotho citizenship and thus include their children as citizens of Lesotho. The Catholic Secretariat also plays a major role in assisting in situations of refugees.

212. When the exclusion clause for refugees from South Africa was concluded between the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Government of Lesotho, the Inter-ministerial Committee on Refugees and Refugee Advisory Board stopped functioning. Lately, a need to revive the body for screening purposes has been felt. The resuscitation of the Inter-ministerial Committee was preceded by training of prospective members of its Screening Committee. In February 1996 a Workshop on Protection of Refugees was held in Maseru, the result of a joint effort by UNHCR and the Ministry of Home Affairs. The workshop was attended by representatives of the Ministry of Home Affairs, the Ministry of Justice, the Department of Police, the National Security Services and the Department of Immigration. Skills and knowledge imparted at this workshop are intended to enable members of the Screening Committee to determine the eligibility for refugee status of asylum seekers.

2. Children in armed conflicts

213. In terms of Additional Protocol I to the Geneva Conventions, a 15-year-old child can be recruited into the armed forces. Lesotho is a party to Protocol I which it ratified without reservations in 1994. The age of 15 years, however, is below the permissible age for recruitment into the defence force in Lesotho. The Defence Act No. 4 of 1996 states that the age of recruitment into the defence force should be between 18 and 24 years.

214. In 1994 an army disturbance resulted in the displacement of the community residing in the besieged zone. During the conflict the affected diplomatic community in Lesotho evacuated to Ladybrand, a neighbouring town in the Republic of South Africa. The causes of the army disturbance and its consequences were vigorously addressed through the professionalization of the army through training and development of an apolitical and non-partisan army.

B. Children in conflict with the law

1. Administration of juvenile justice

215. Under the administration of justice, a child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, takes the child's age into consideration and aims at his or her reintegration in society. The child in such circumstances is entitled to the following basic guarantees:

(a) To be presumed innocent until proved guilty in accordance with the law;

(b) To be informed promptly and directly of the charges against him or her and to have legal or other appropriate assistance in the preparation and presentation of a defence;

(c) To have the matter determined without delay, by a competent, independent and impartial authority, in the presence of legal or other appropriate assistance and, unless contrary to the child's best interests, in the presence of the child's parents or guardians;

(d) To have the free assistance of an interpreter if necessary and his/her privacy respected at all stages of the proceedings.

216. The Committee recommends that a child should be put in a separate room from that of the accused person during a hearing. Once the child has identified the accused person the accused should only be provided with hearing aids which enable him to listen to what the child is saying and therefore properly advise his lawyer on what to say during cross-examination. Video evidence as recommended may also be used as another device.

217. Children under the age of 18 years who come in conflict with the law are juvenile offenders. The Children's Protection Act of 1980 outlines special legal procedures that have to be followed in criminal cases affecting children. These procedures are protective to children who come into conflict with the law. The Act provides a juvenile justice system that varies from the criminal justice system in certain respects.

218. The Children's Protection Act in section 5 stipulates that every subordinate court shall sit as a Children's Court. The court shall sit in a room other than that in which the court ordinarily sits. Criminal proceedings being instituted against the child shall be in camera and not in public court. In accordance with section 6, such proceedings shall be instituted in the presence of a parent, guardian, counsel or attorney of the child and the magistrate presiding at the sitting. The court proceedings of any such

criminal case shall not be published by radio, in document, print or any other means. Neither shall the identity of the child involved in such proceedings be published. These procedural safeguards are intended to protect the child and avoid stigmatization of the child as a criminal. The provisions are in line with rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules", which provide that the juvenile's right to privacy shall be respected and that no publicity, labelling or information identifying the juvenile offender shall be published.

219. Section 10 of the Children's Protection Act empowers the Children's Court to make an order recommending either that a child be placed in the custody of a foster parent, or be placed in an approved school. These recommendations may be made where the Children's Court is satisfied that a child is in need of care. Where punishment of the child is necessary according to section 26 (1) of the Act, no child shall be punished by imprisonment.

220. A court may, in cases where the previous conduct of the child and the circumstances of the offence so require, recommend that the child undergoes rehabilitation in an approved school. The Juvenile Training Centre (JTC) exists as the main rehabilitation centre for juvenile offenders. The Juvenile Training Centre caters for male juvenile offenders only. Section 29 of the Children's Protection Act places the supervision of approved schools under the Chief Probation Officer. In practice the Juvenile Training Centre is not manned by the Chief Probation Officer, but the Department of Prisons, which is also mandated to manage the Centre. This is a grave departure from the provisions of the law. Section 30 further provides that every approved school shall be classified according to the discipline and training required by children to be detained therein.

221. The evidence of a child is usually approached with caution as it must be corroborated and not rebutted by any other form of evidence. In cases where a child is a conspirator with an adult their criminal intention is joint and the two are therefore jointly charged with a similar crime as the Director of Public Prosecution (DPP) might direct. Under such circumstances the child cannot be protected under the Children's Protection Act. The Committee recommended that the office of the DPP should, however, look into this matter and ensure the protection of all children in the courts. It encouraged that whoever has to exercise discretion on whether a criminal trial should be joint or separate, must do so in the best interests of the child.

222. The Children's Protection Act is not much respected by the courts. The police and prosecutors are also known to ignore this Act.

223. The legal requirement that the child should be presumed innocent until found guilty by the court is not adhered to by the police. Once the child comes in contact with the police the child may get beaten up and children have been kept in police custody for up to five days, disregarding the legal 48-hour period, after which one must be taken to court. The police engage in this practice for the sole reason that they are disciplining the child.

224. Prosecutors are too aggressive and intimidating. The Inter-ministerial Committee emphasized that it is vital that the criminal justice system protects the rights of the suspect throughout, as one becomes a criminal only upon conviction.

2. Children deprived of their liberty

225. Section 6 (1) of the Lesotho Constitution provides that every person shall be entitled to personal liberty, meaning that a person shall not be arrested or detained save as may be authorized by law in any of the following cases:

(a) In an execution of the sentence or order of a court, in respect of a criminal offence of which one has been convicted; and

(b) In accordance with section 6 (1), subsection (f), in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare.

226. Deprivation of the child's liberty is a common phenomenon, which is practised in different ways. Some parents request that children who are acquiring delinquent tendencies and habits be confined despite the fact that they have not committed any crime or offence. Normally the magistrates or the presiding officer makes an order committing the child to confinement. This is an unlawful and arbitrary procedure, as there is no law that warrants detention on this basis. On the other hand, the Prison Proclamation 37 of 1957 in sections 9 (1) and (2) respectively stipulates that a child can only be detained in a Juvenile Training Centre for a period not exceeding three years. Subsection 2 specifically provides that, "A person sentenced to detention in a Juvenile Training Centre shall be detained for such period, not extending beyond three years after the date of his sentence, as the Board of Management may determine and shall then be released provided that the Board of Management shall not release any such person before the expiration of nine months from the date of his sentence, unless required to do so by directions of the Director of Prisons".

227. Instances have also been noted to exist where magistrates or presiding officers sentence juvenile offenders to imprisonment. Section 8 (1) provides for the transfer from prison to a juvenile centre of a juvenile offender and vice versa. The section provides that "If the Director is of the opinion that a person serving a sentence of imprisonment be detained in a Juvenile Training Centre, he may report such opinion to the court which sentenced such person and such court may, with due inquiry, order such person's transfer to a juvenile training centre". Subsection 2 further provides that if a person detained in a Juvenile Training Centre is reported by the Board of Management to be incorrigible, or to be exerting a bad influence on the other inmates of the centre, the court which sentenced him may, after due inquiry, later issue a sentence of detention in a juvenile centre to such term of imprisonment, with or without hard labour as the court may determine, but without extending beyond three years after the date of the original sentence.

3. Sentencing of juveniles

228. The Constitution is silent on the issue of sentencing juvenile offenders. The Criminal Procedure and Evidence Act of 1981 is silent regarding the sentencing of juveniles by capital punishment. Although the Children's Protection Act and the Criminal Procedure and Evidence Act are against the imprisonment of children, almost all children who go to the Juvenile Training Centre are kept under prison conditions. Alternatives to custody given by the Children's Protection Act and the Criminal Procedure and Evidence Act include suspended sentences, recognizance, whipping, probation order and fines. Whipping is a violation of the Convention. In the period under review, which is 1992 to the present, no juvenile offender has been sentenced to capital punishment. In respect of imprisonment, the case of Rex v. Nozabalese 'Moso CRI/T/46/94 delivered by Justice G.N. Mofolo on 14 August 1995 is illustrative. In this case the accused was sentenced to an indefinite period of detention in the Juvenile Training Centre. The sentence in its nature has constituted a great departure from the Prison Proclamation, the Children's Protection Act and the Convention which prohibit the imposing of an indefinite period of detention on a minor in custody (see annex).

229. The Probation Unit which has been administering supervision orders has reported a rise in the use of such orders. In 1992 the Unit handled 25 cases, in 1993, 210 cases and in the first half of 1994, 84 cases. The vast majority of the cases were for minor offences. The Probation Unit, in its effort to promote the use of non-custodial forms of sentencing, in line with the Beijing and Tokyo rules, is greatly encouraged that magistrates are increasingly using non-custodial forms of sentence for juvenile offenders. Unfortunately their efforts are hampered by a shortage of probation officers and inadequate decentralization of the probation service. An intended expansion to Leribe, Thaba-Tseka and Mohale's Hoek has had to be curtailed, due to lack of staff. The overall intention is to expand to all districts of Lesotho. The technical assistance rendered by Save the Children Fund (UK) to the Unit over the last 24 months has been helpful in terms of expertise and aid.

Table 4

Children in custody, 1990-1995

	Under 15 years old				15-20 years old			
	Boys in prison	Boys in JTC	Girls in prison	Girls in girls Unit	Boys in prison	Boys in JTC	Girls in prison	Girls in girls Unit
1990	16	9	0	2	680	125	31	32
1991	10	8	0	3	656	96	37	32
1992	9	12	0	0	748	125	32	26
1993	21	11	6	4	888	162	75	34
1994	24	10	2	2	769	120	27	20
1995	16	5	1	0	858	87	39	27
1996	15	20	3	2	886	135	57	25
1997	19	15	2	-	734	88	47	-

Lesotho Bureau of Statistics.

C. Physical and psychological recovery and social reintegration

1. Economic exploitation

230. Section 32 of the Constitution provides that Lesotho shall adopt policies designed to provide that:

(a) Protection and assistance is given to all children and young persons without any discrimination for reasons of parentage or other conditions;

(b) children and young persons are protected from economic and social exploitation;

(c) The employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is punishable by law; and

(d) There are age limits below which the paid employment of children and young persons is prohibited and punishable by law.

231. The Labour Code of 1992 in part IX, section 124, provides for the regulation of the employment of women and young persons, including children. Children coming from poor families who move to urban areas, however, fall prey to marginally paying jobs. Other children who join the child labour force are the neglected ones. Some of these neglected children are those whose parents have relegated their responsibilities to relatives and grandparents. The other category of child labourers is the delinquents. These are children who have simply run away from home defying parental control and guidance or because life has become too difficult for them and therefore they decide to

resort to the streets. In the urban areas many children work on a casual basis: bus conducting, water and luggage carrying, childminding, car-washing. trolley pushing and newspaper vending. Some of these children work virtually full-time at these activities and rely on them as their main source of income.

232. Girls under 15 years are often hired as domestic workers. Usually the terms of reference of such employment are not clearly defined in respect of responsibilities and hours of work. Work can start as early as 5 a.m. and continue until very late at night. Girls employed under such conditions have very little time to rest. Sometimes they sleep in the same room with the children of the house, having no privacy whatsoever, and sleep without decent bedding. Anecdotal evidence also indicates that domestic workers are often not allowed visits by friends and relatives. Child domestic workers are regularly lonely and depressed due to their working conditions. Frequently, girl domestic workers are exploited in terms of earnings. As a result many of them desert.

233. The assertions made here should not imply that all girl domestic workers are badly treated or badly paid. However, their total lack of protection by the law means that abuse is possible. No legislation protecting their rights exists in Lesotho. One slight improvement in the law has been made - the Minimum Wages Act of 1994 - which sets a minimum amount of M200 for wage labour such as domestic work. Most employers pay the very minimum wage, while others still violate the law.

234. The practice of herding livestock is the oldest form of contractual labour for boys under the age of 18 years. This is viewed as a custom that prepares young boys for manhood and a role of responsibility. In rural areas this form of labour is prevalent, as livestock is perceived as a source or indication of family wealth. The need for young boys to take a direct interest in the management of livestock is based on the grounds that the livestock constitute their future inheritance. In some instances boys may be hired out to other families to mind their stock. Remuneration for such herdboys varies from employer to employer. Payment is usually arranged between the parents of the herdboy and the employers. The herdboy is usually not a party to the negotiations. Remuneration for his labour is not collected directly by the boy himself but by his parents. In the rural areas, payment tends to be in the form of livestock, one head of cattle or six sheep or goats per year.

235. In the Sechaba Consultants Survey of 1994, 317 or 10.3 per cent of boys between 6 and 15 years were herdboys full-time. A third of these were under 10 years of age. Adverse implications for herdboys were identified as follows:

(a) Not attending school, or in some cases delayed attendance of school. Children from poor households, particularly where there is no livestock and parents cannot afford school costs, tend to become full-time herdboys. This usually entails "loaning" them to relatives with livestock. As a result such children miss out on their schooling completely;

(b) Herding is a dangerous and lonely venture for herdboys. Severe storms in the mountains kill several herdboys each year;

(c) The nutritional and health status of these children is normally low due to lack of medical care and lack of access to a well-balanced diet.

236. UNICEF has, however, taken an initiative to address the problem of herdboys. Presently a school in the Mokhotlong district has been established to respond to the educational needs of herdboys.

2. Sexual abuse

237. Actual statistics on child sexual abuse are not available but Sililo-Tshishonga's anecdotal study of abuse in the Thibella area of Maseru gives ample evidence. In her study the researcher found that incest, rape and sodomy were all present in that area. The study also observes that miners who had grown accustomed to homosexual relationships in the mine compounds sometimes pay young boys for sexual favours on their return to Lesotho. Although no statistics are available, it also appears from anecdotal evidence that sexual abuse within the family is as common in Lesotho as anywhere else. According to nursing staff abused children are sometimes brought to hospital, but no follow-ups or official reports are made. In most cases, the parents or families of such children are embarrassed to report such cases for prosecution. In 1993 three cases of sexually abused children were referred to the children's village of Lesotho Save the Children. Sexual abuse is increasingly being recognized as a problem and it is being reported.

3. Sexual exploitation

238. Proclamation 14 of 1949 on Women and Girls Protection also imposes penalties for persons who by threats, fraud or drugs procure or attempt to procure any woman or girl to have unlawful carnal connection.
Section 2 provides that: "(1) Any person who by threats or intimidation, procures or attempts to procure, any woman or girl to have unlawful carnal connection or (2) by false pretences or false representations procures any woman or girl to have unlawful carnal connection (3) applies, administers to, or causes to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl; shall be guilty of an offence and being convicted thereof shall be liable, at the discretion of the court, to a fine not exceeding one thousand Maloti or to imprisonment for a term not exceeding six years".

4. Other forms of exploitation

239. Physical and emotional neglect constitute other forms of exploitation of children. These have already been elaborated upon, including the penalties that go with such abuses. Incest, however, also constitute another form of exploitation of children. Incest, which consists in unlawful and intentional sexual intercourse between two persons who on account of consanguinity, affinity or an adoptive relationship may not marry one another, is a common law crime. According to section 259 incest is chargeable. Bestiality is also prohibited under common law.

5. Sale, trafficking and abduction

240. Under common law, the removal of a child from his or her parent's or guardian's home without requisite consent constitutes a criminal offence. Where abduction or kidnapping of the child takes place, an extradition treaty entered into between Lesotho and the Republic of South Africa would be effected to gain recovery of the child. Lesotho is not a party to the Hague Convention on Civil Aspects of International Child Abduction. Neither is it a party to the International Convention for the Suppression of the Traffic in Women and Children of 1921, as amended. These conventions need to be given due consideration.

6. Children of minorities or indigenous populations

241. Children of minority communities are protected by section 18 of the Constitution which accords everyone the right to enjoy rights without discrimination. Constitutional exceptions are only recognized in respect of citizenship.

List of relevant legislation

Children's Protection Act No. 6 1980

The Marriage Act No. 10 1974

Law Reform Act 1994

Labour Code Order No. 118 1992

The Lesotho Constitution of 1993

Lesotho Citizenship Order 1971

Registration of Births and Deaths Act 1973

Criminal Procedure and Evidence Act 1981

National Programme of Action

National Population Policy

National Health Policy

Age of Majority Ordinance 1829

The Refugee Act No. 18 of 1983

The Marriage Act No. 10 1974

The Education Act of 1995

Women and Girls Protection Proclamation No. 14 1949

Adoption Proclamation No. 690 of 1959

Defence Act No. 4 of 1996

Deserted Wives and Children's Proclamation No. 590 of 1959

Annex

CASES CITED IN THE REPORT

1. Case of Rex v. Nozabalese 'Moso (see paragraph 26)

The case of Rex v. Nozabalese 'Moso CRI/T/46/94 delivered by Mr. Justice G.N. Mofolo on 14 August 1995 is illustrative of the conflict that exists regarding the definition of a child in Lesotho. The accused was charged with the murder of her infant baby. Counsel for the defence submitted that although the accused was 15 years of age, the court was to depart from fixing the age of criminal responsibility at 14, as the age difference between 14 years and 15 years was so marginal that it could not be said to exist.

In addressing the issue of criminal capacity to commit a crime, Justice Mofolo concluded that given the accused's age, which was 15 years, the accused had criminal capacity to commit the crime and he therefore held that when the accused killed her child she had the criminal intention and capacity to do so. The legal consequence of this was conviction and imprisonment. The sentence was, however, contrary to the Children's Protection Act of 1980 which prohibits the imprisonment of children in section 26 (1). The social inquiry report tabled by counsel for the defence which recommended the sentence of community service was not given cognizance by Justice Mofolo. In consequence of the sentence of imprisonment, counsel noted an appeal contesting that the defendant could not be imprisoned as she was below the age of 18 years and as such was a child as defined by section 2 of the Children's Protection Act. On appeal, the judgement of the court a quo was overruled.

The Age of Majority Ordinance No. 62 of 1829

The Age of Majority Ordinance stipulates the age of majority as 21 years. Any person who has therefore attained the age of 21 can freely contract and enter into marriage without seeking prior parental consent. Any person under 21 is considered a child and a minor requiring parental consent in order to enter into a valid civil marriage or a valid contract. Where a contract is to the benefit of the minor, such as an apprenticeship, a minor is free to contract without prior parental consent.

2. Case of Mohapi v. Magelepo 1976 LLR P131 at 134 (see paragraph 27)

This case lays the principle that a man remains a minor until he marries. In this case, the man was 30 years of age and unmarried when the case was brought, and therefore a minor. The case further indicated that when a man marries earlier than 21 years, he achieves majority status.

3. Case of 'Makhahliso Ts'ilo v. Thabo Ts'ilo CIV/A/25/92 (see paragraph 127)

This case is illustrative of the point that a person who is liable to maintain must have the means to do so. In addressing the issue of maintenance of a minor child at the rate of M60 per month, including the mother at the same rate, Justice T. Monaphathi elucidated the principle that, "The person from whom support is claimed must be able to support the claimant. The person

from whom maintenance is claimed must have sufficient means ... and the duty to maintain is facultative and depends upon the reasonable requirements of the party claiming it and the ability of the party from whom it is claimed to furnish it". When quoting from P.Q.R. Boberg on The Law of Persons and Family Law he stipulates that, "In maintenance claims, gainful employment must be proved; each party in a maintenance claim must contribute in a reasonable manner, in proportion to the means of such a party. [In such circumstances] ability to pay must be highly distinguished from refusal to pay".